



A REPORT
TO THE
ARIZONA LEGISLATURE

Performance Audit Division

Performance Audit and Sunset Review

Board of Homeopathic Medical Examiners

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Debra K. Davenport
Auditor General

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

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August 22, 2007

Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Mr. Charles Schwengel, President
Board of Homeopathic Medical Examiners

Ms. Christine Springer, Executive Director
Board of Homeopathic Medical Examiners

Transmitted herewith is a report of the Auditor General, A Performance Audit and Sunset Review of the Board of Homeopathic Medical Examiners. This report is in response to a May 22, 2006, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting with this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Board of Homeopathic Medical Examiners agrees with most of the findings and plans to implement, or implement in a different manner, all of the recommendations directed to it.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on August 23, 2007.

Sincerely,

Debbie Davenport
Auditor General

Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Homeopathic Medical Examiners (Board) pursuant to a May 22, 2006, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

The Board was organized in 1981 after certain physicians regulated by the Arizona Medical Board (AMB) alleged that the the AMB was antagonistic toward nontraditional medicine. In order to obtain a license, applicants must have an active allopathic (MD) or osteopathic (DO) license from Arizona or another U.S. state, district, or territory. However, after obtaining a homeopathic license, the physician can allow the allopathic or osteopathic license to lapse. As of May 2007, the Board had 104 licensed homeopathic physicians; 11 of these had active Arizona DO licenses, 44 had active Arizona MD licenses, and 21 practice under their MD(H) license without an Arizona MD or DO license. The remaining 28 homeopathic physicians reside out of state.

Homeopathy is traditionally a system of medicine that seeks to stimulate the body's own healing response when health problems develop. It was developed by Samuel Hahnemann in Germany in the late 1700s. In 1810, he published the *Organon of Medicine*, which describes the homeopathic philosophy and practice. Homeopathic medicine is holistic. Homeopathic physicians treat the body as an integrated whole and view symptoms as attempts by the body to heal itself. Therefore, homeopathic drugs administered in microdosages stimulate the symptoms of a disease and help the body to heal. However, in Arizona the statutory definition of homeopathy encompasses numerous other therapies, including:

- **Acupuncture**—The diagnosis and treatment of ailments using needles, heat, or physical and electromagnetic impulses or currents.
- **Chelation therapy**—The use of a synthetic solution injected into the body where it binds with metals and is excreted through the kidneys.
- **Homeopathy**—A system of medicine that treats symptoms in accordance with the principle that a substance that produces symptoms in a healthy person will cure those symptoms in a sick person.
- **Minor surgery**—Surgical procedures performed in an outpatient setting, including repairing injuries to the skin or mucous membranes and using topical, local, or regional anesthetics.

- **Neuromuscular integration**—The use of manual methods, physical agents, and physical medicine procedures and devices to normalize body structure.
- **Nutrition**—The recommendation of therapeutic or preventive dietary measures, food factor concentrates, fasting and cleansing regimens, and the rebalancing of digestive system function.
- **Orthomolecular therapy**—The use of an optimum concentration of vitamins, minerals, and other substances normally present in the human body.
- **Pharmaceutical medicine**—The use of prescription-only and nonprescription pharmaceuticals, as well as botanical, biological, or mineral medicines.

Legislature should consider best regulation method (see pages 13 through 25)

The Legislature should consider whether there is a need to continue the Board. Both board members and supporters continue to support the Board's existence. Some board members argue that the Board's presence increases access to care and continuity of care because patients can see one physician for all of their care rather than several different practitioners. Homeopathic treatments are available from practitioners other than homeopathic physicians, such as naturopaths. However, some board members assert that homeopathic physicians have a greater depth of medical knowledge and therefore a better understanding of how to treat disease or dysfunction. Board supporters also believe that the AMB and the Osteopathic Board are still intolerant of homeopathic physicians. In fact, at the January 2007 board meeting, several patients of homeopathic physicians reported that the Board was critical to ensuring they could continue to obtain their healthcare of choice. Although allopathic and osteopathic physicians are not restricted from practicing any of the therapies that the Homeopathic Board regulates, the use of chelation therapy is more strictly limited by the AMB and is not embraced by the Osteopathic Board (although some procedures may be within its standard of care). Furthermore, the Osteopathic Board reports that it considers orthomolecular therapy to be an experimental treatment and would expect any physician using the therapy to comply with statutory requirements for experimental therapies, including informed patient consent, periodic analysis of results, and peer review. These regulations are not required for homeopathic physicians to practice orthomolecular therapy.

Although the Board was created to address perceived intolerance for nontraditional care, nontraditional medicine is more accepted than it was in the 1980s. According to the Centers for Disease Control and Prevention, National Center for Health Statistics, in 2002, 36 percent of adults reported using nontraditional medicine. In addition, during the 2002-2003 academic year, 98 out of 126 medical schools in the

United States included nontraditional medicine as a topic in at least one required course. Further, allopathic and osteopathic physicians in Arizona are not statutorily restricted from practicing the therapies within the Board's purview. In addition, naturopathic physicians can practice the same or similar therapies that homeopathic physicians practice, and other licensed providers in the State provide many of the therapies as well. For example, naturopathic physicians can practice acupuncture, chelation therapy, homeopathy, nutrition, orthomolecular therapy, pharmaceutical medicine, and minor surgery. Finally, a separate board is not a common approach nation-wide to regulating nontraditional medicine. Arizona is one of only three states with a separate board for homeopathy. Auditors identified at least 14 states that have statutes to address allopathic and osteopathic physicians' practice of nontraditional medicine. These statutes include: specifying that using nontraditional methods is not unprofessional conduct, prohibiting boards from denying a license to an applicant because the physician practices nontraditional medicine, requiring oral or written informed patient consent when physicians provide nontraditional care, and requiring at least one of its board members to be a physician who practices nontraditional medicine. If the Legislature chooses to sunset the Board, it would need to determine how to address the issue of those homeopathic physicians left without a license to practice. For example, the Legislature could require them to obtain either an allopathic or osteopathic license to continue to practice or allow them to be grandfathered in to the respective board that previously licensed them if their licenses are or were in good standing. The Legislature would also need to address the Board's responsibility for registering homeopathic medical assistants. Options include permitting homeopathic medical assistants to continue as such without requiring the training prescribed by rule for allopathic and osteopathic medical assistants, authorizing the AMB or the Osteopathic Board to set up a registration system for such assistants as currently exists for the Homeopathic Board, or taking no action, which would require homeopathic medical assistants to qualify under the existing AMB or Osteopathic Board Rules.

If the Legislature chooses to continue the Board, the Legislature and the Board need to take steps to address three regulatory issues that potentially limit the protection provided to the public. First, the Board appears to allow conduct that the other two Arizona physician regulatory boards have determined is unsafe or unprofessional. For example, the Board has allowed two physicians to continue to practice although either the AMB or the Osteopathic Board has revoked their licenses. As a result, the Board's actions have contradicted the other board's actions. The Legislature should consider forming a study committee comprising, at a minimum, members of the Board, the AMB, and the Osteopathic Board to determine the best way to help ensure that one board's actions do not negate or mitigate another board's actions, including any recommended statutory changes. Second, members of the public may be confused by a physician holding both a homeopathic and an allopathic or osteopathic license. As a result, they may not know whether the treatment being provided is traditional or nontraditional. To ensure that patients know they are receiving nontraditional treatment, the Legislature should consider amending board

statutes to require homeopathic physicians to obtain informed consent, and the Board should determine what information should be included in a written informed patient consent and develop a policy to require it. Finally, the Board's name does not reflect the scope of therapies Arizona-licensed homeopathic physicians can practice. Homeopathy is only one of many therapies the Board's statutes authorize; therefore, the Board should identify a more appropriate name and request that the Legislature change the Board's name to more accurately reflect the therapies authorized in its statutes.

Board needs to improve its complaint-handling practices (see pages 27 through 33)

If the Board is continued, it needs to improve its complaint-handling process. The Auditor General's Office has found that health regulatory board complaints should be resolved in 180 days or fewer, but more than one-third of the Board's 41 complaints received in fiscal years 2004 through 2006 were open longer than 180 days. Further, all 6 complaints open in November 2006 had been open longer than 180 days. Several factors contribute to the Board's delay in resolving complaints, including waiting for another board to agree that the Board has jurisdiction before beginning an investigation, holding investigational interviews in board meetings rather than having a board member or a designee conduct the interview outside of the board meeting, and lacking time frames for the complaint process as well as a system to monitor complaint progress.

In addition, when the Board considers complaints, it sometimes fails to decide whether or not each allegation was substantiated as part of the adjudication. For example, in considering a complaint involving misdiagnosing a patient's condition, the Board discussed that the therapy used was allowed under the Board's statutes, but it did not address the allegation that the physician had inappropriately diagnosed the patient's condition.

Licensure does not ensure competency in authorized therapies (see pages 35 through 39)

If the Board is continued, the Legislature and the Board should take steps to ensure that its licensees are sufficiently qualified to practice all the therapies authorized by statute. A.R.S. §32-2901(22) identifies several therapies that homeopathic physicians can practice, but the Board lacks clear statutory authority to ensure that its licensees are qualified to practice those therapies. The Board does not limit a physician's practice to only those therapies in which the applicant is educated, apparently

because the Board's statutes do not specifically allow such a limitation. To ensure that homeopathic physicians are sufficiently trained to practice, the Legislature should consider amending A.R.S. §32-2912 to limit a physician's practice to the therapies he or she is educated in.

In addition, the Board has not developed exams that ensure its licensees have adequate knowledge to practice all therapies. First, the Board's written exam covers only homeopathy and none of the other therapies allowed by the Board's statutes. Second, although the Board has an oral exam, it does not require the applicant to discuss all authorized therapies during the oral exam. In addition, the oral exam is not considered a confidential record by statute and is conducted during the regular session of board meetings. The Board needs to take steps to develop and implement comprehensive written and oral exams that cover all therapies the homeopathic license authorizes. In addition, the Board should seek a statutory change to classify the oral exam as a confidential record.

Finally, unlike other Arizona health regulatory boards, the Board does not require homeopathic physicians to obtain continuing education to renew their license. During the course of the audit, the Board began to develop continuing education requirements. To ensure homeopathic licensees are educated in their field's most recent developments, the Legislature should consider amending board statutes to require continuing education for its licensees.

Other pertinent information (see pages 41 through 42)

The Board's statutes require that a physician be of good moral character; have a professional record that indicates that a license to practice medicine has not been refused, revoked, suspended, or restricted in any way; and have a professional record that indicates that the applicant has not engaged in any conduct that would constitute grounds for disciplinary action against the homeopathic license. However, statute also allows the Board to determine whether the conduct has been corrected, monitored, and resolved to its satisfaction. Between fiscal years 2004 and 2006, the Board considered 23 applications for homeopathic physicians. Of those, 2 were from applicants who had a felony conviction, and the Board licensed both of the applicants after discussing their cases in public board meetings. Some Arizona health regulatory boards have similar language in their statutes; auditors identified only two boards, the Board of Nursing and the Board of Massage Therapy, that bar felons from applying for a license until 5 years after conviction or after they have completed their sentences.

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INTRODUCTION & BACKGROUND

The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Homeopathic Medical Examiners (Board) pursuant to a May 22, 2006, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

Homeopathic medicine

Homeopathy is traditionally a system of medicine using the key premise that every person has energy called a vital force or self-healing response. When this energy is disrupted or imbalanced, health problems develop, and homeopathy aims to stimulate the body's own healing responses. In the late 1700s, German physician Samuel Hahnemann developed homeopathy, and in 1810 he published the *Organon of Medicine*, which describes the homeopathic philosophy and practice.¹ Homeopathic medicine is holistic. Homeopathic physicians treat the body as an integrated whole and view symptoms as attempts by the body to heal itself. Therefore, homeopathic drugs administered in microdosages stimulate the symptoms of a disease and help the body to heal.

In Arizona, the statutory definition of homeopathic medicine encompasses numerous other therapies, including homeopathy.² According to A.R.S. §32-2901(22), homeopathic medicine includes:

- **Acupuncture**—The diagnosis and treatment of ailments using needles, heat, or physical and electromagnetic impulses or currents. Acupuncture has been used to treat many various ailments, including postoperative pain, chemotherapy nausea, lower back pain, carpal tunnel syndrome, and asthma.

¹ Lewitt, George. Homeopathy: Hahnemann, Christian Friedrich Samuel. *The Oxford Companion to Medicine*. New York: Oxford University Press, 2001.

² A.R.S. §32-2901(22) includes the following in its definition of the practice of homeopathy: acupuncture, orthomolecular therapy, neuromuscular integration, nutrition, homeopathy, and chelation therapy. According to board administrative code and license application, these therapies are described as "modalities." In medicine, homeopathy is a system of medicine, while acupuncture, orthomolecular therapy, neuromuscular integration, nutrition, and chelation are more specific therapies. Board members expressed concern that the term "therapies" used in place of the term "modality" does not capture the distinction between a system of medicine and a therapy. However, because administrative code uses the term modality for both a system of medicine and a therapy, for the purposes of this report, all of the modalities are referred to as therapies.

- **Chelation therapy**—A therapy in which a synthetic solution is injected into the body where it binds with metals excreted through the kidneys. The Food and Drug Administration approves chelation therapy to treat lead poisoning and seriously high calcium levels, but some homeopathic physicians use chelation therapy to treat ailments and diseases such as autism, lupus, and arteriosclerosis. When it is used to treat anything other than heavy metal poisoning, chelation therapy is considered an experimental therapy that requires informed patient consent, peer review, and the use of experimental protocols.
- **Homeopathy**—A system of medicine that treats symptoms in accordance with the principle that a substance that produces symptoms in a healthy person will cure those symptoms in a sick person.¹ The Board recognizes both classical homeopathy, which uses minute doses of homeopathic medicines described in the *Organon of Medicine*, and complex homeopathy, which uses one or more homeopathic medicines that are not described in the *Organon of Medicine*. For example, a classical homeopath would treat hypertension by finding a single homeopathic medicine that addresses the person's symptoms on physical, mental, emotional, and spiritual levels, while a complex homeopath would focus on treating the hypertension and prescribe a formula of one or more homeopathic remedies known to treat hypertension.

Examples of medical practice in Arizona:

- **Homeopathic medicine (MD(H) and MD or DO):** diagnosing, treating or correcting real or imagined human diseases, injuries, ailments, infirmities, and deformities. Homeopathic medicine includes acupuncture, chelation therapy, homeopathy, minor surgery, neuromuscular integration, nutrition, orthomolecular therapy, and pharmaceutical medicine.
- **Allopathic medicine (MD):** diagnosing, treating, or correcting or attempting or the holding of oneself out as being able to diagnose, treat, or correct any and all human diseases, injuries, ailments, infirmities, deformities, physical or mental, real or imaginary, by any means, methods, devices, or instrumentalities.
- **Osteopathic medicine (DO):** examining, diagnosing, treating, prescribing for, palliating, preventing or correcting human diseases, injuries, ailments, infirmities and deformities, physical or mental conditions, real or imaginary, by the use of drugs, surgery, manipulation, electricity or any physical, mechanical, or other means as provided by statute.

Source: A.R.S. §§32-2901(22); A.R.S. 32-1401(22); and A.R.S. 32-1800(24)(a).

- **Minor surgery**—Surgical procedures performed in an outpatient setting, including casting uncomplicated fractures, repairing injuries to the skin or mucous membranes, and using topical, local, or regional anesthetics. Minor surgery does not include procedures such as opening body cavities or the biopsies of internal organs.

- **Neuromuscular integration**—Use of any combination of manual methods, physical agents, and physical medicine procedures and devices to improve physiological function by normalizing body structure. It is common to osteopathic medicine and could include chiropractic and other hands-on methods.

¹ Homeopathy differs from naturopathy, which according to A.R.S. §32-1501(27) treats patients using natural means; drugless methods; drugs; nonsurgical methods; devices; physical, electrical, hygienic, and sanitary measures; and all forms of physical agents and modalities.

- **Nutrition**—Recommendation of therapeutic or preventive dietary measures, food factor concentrates, fasting and cleansing regimens, and the rebalancing of digestive system function to correct malnutrition, resolve conditions related to metabolic imbalance, and support optimal vitality.
- **Orthomolecular therapy**—Providing the optimum concentration of substances normally present in the human body such as vitamins, minerals, amino acids, and enzymes. It includes diagnosing of ailments that result from genetic or environmental influences, as well as acquired or inherited allergy and hypersensitivity responses. Some physicians use orthomolecular therapy, such as intravenous Vitamin C, to improve nutritional status in debilitated patients, or vitamins, nutrients, and avoidance of allergy-sensitive substances to treat irritable bowel syndrome.
- **Pharmaceutical medicine**—Using prescription-only and nonprescription pharmaceuticals as well as botanical, biological, or mineral medicines to treat patients. To use pharmaceutical medicine, including nonprescription pharmaceuticals and medicines, the physician must obtain a dispensing permit from the Board.

Board history and responsibilities

The Arizona Legislature created the Board in 1980, and the Board was organized in 1981. At that time, physicians who practiced homeopathic medicine were regulated by the Arizona Medical Board (AMB) if they had allopathic training and the Board of Osteopathic Examiners in Medicine and Surgery (Osteopathic Board) if they had osteopathic training.¹ However, physicians who wanted to practice nontraditional medicine alleged that the AMB was antagonistic toward nontraditional medicine. For example, the lobbyist working for the Board's enabling legislation stated that the AMB's intolerance of homeopathic practices necessitated an independent board. As a result, the Legislature created a separate board to regulate allopathic and osteopathic physicians who also wanted to practice nontraditional medicine. Later, in the 1985 Auditor General's sunset review of the Board, board members continued to assert that differences in medical philosophy tended to polarize homeopathic physicians and other medical doctors. The Board's president at that time went on to state that while homeopathic physicians had not experienced problems with the osteopathic community, he did not believe that the AMB would fairly regulate homeopathic physicians.

¹ In 1981, the AMB was the Board of Medical Examiners. In 2002, statute was amended to change the name to the Arizona Medical Board.

The Board's mission is:

To protect the public health, safety, and welfare by regulating allopathic and osteopathic physicians who apply for a homeopathic medical license and registering homeopathic medical assistants that work under the supervision of licensed homeopathic physicians that practice within the State of Arizona.

The Board has various responsibilities that are designed to help accomplish its mission, including:

- Issuing and renewing licenses to qualified persons practicing homeopathic medicine;
- Conducting investigations and hearings concerning unprofessional conduct or other statutory violations;
- Disciplining violators;
- Providing consumer information to the public;
- Registering homeopathic medical assistants; and
- Accrediting educational institutions that offer medical degrees in homeopathic medicine.

Licensure requirements

According to the Board, as of May 2007, it had 104 licensed physicians. To obtain a homeopathic medical license, an applicant must:

- Be of good moral character;
- Possess an active allopathic or osteopathic license in good standing from Arizona or another U.S. state, district, or territory;
- Have a professional record indicating that the applicant has not had a license refused, revoked, suspended, or restricted in any way for reasons that relate to the physician's ability to competently and safely practice medicine;
- Have a record indicating that the applicant has not committed any act or engaged in conduct that would be grounds for discipline by the Board. Statute allows the Board to consider whether the conduct has been resolved in granting a license;

The Board had 104 licensed physicians as of May 2007.

- Complete 300 hours of post-graduate coursework in one or more of the therapies with at least 40 hours of coursework in classical homeopathy, or complete a preceptorship consisting of an extended period of study with one or more physicians qualified to provide training in one or more of the therapies, or receive a degree of doctor of medicine in homeopathy; and
- Pass a written exam testing the physician's knowledge of classical homeopathy.

The Board's administrative rule R4-38-106(3)(A) requires applicants to submit to an oral interview to examine the applicant's personal and professional history and during which the Board may discuss any past misconduct and its resolution. The Board's interview also includes the applicant's summary of the clinical management of a case study developed by the Board.

The Board renews licenses annually. Renewals require a completed renewal application that includes disclosure of any action taken against the licensee by another regulatory board or federal agency during the previous year. Although homeopathic physicians must have an active allopathic or osteopathic license to obtain the homeopathic license, they are not required to maintain that license after they receive their homeopathic license. Of the 104 homeopathic physicians licensed in Arizona as of May 2007, 44 have an active Arizona allopathic license, 11 have an active Arizona osteopathic license, and 21 have a homeopathic license but no current Arizona MD or DO license. The remaining 28 homeopathic physicians reside out of state.

The Board also registers homeopathic medical assistants. As of July 2007, the Board reported that it had 44 registered homeopathic assistants. Assistants do not obtain their own registration. Rather, a homeopathic physician applies to the Board to supervise and register the assistant. According to R4-38-302, to register a homeopathic medical assistant, a homeopathic physician must submit evidence that the assistant has obtained education in the specific procedures the homeopathic physician plans to delegate to the medical assistant. The assistant must also have education in general medical office procedures.

Complaint resolution

The Board investigates and adjudicates complaints involving physicians who may be medically incompetent, mentally or physically unable to engage safely in the practice of medicine, or guilty of unprofessional conduct by homeopathic physicians as authorized by statute. According to A.R.S. §32-2933, unprofessional conduct can include commission of a felony, gross or repeated negligence, being disciplined by another board, representing that an incurable disease can be cured,

The Board receives complaints from the public, the AMB, and the Osteopathic Board.

and immorality or misconduct that discredits the profession. The Board receives complaints from the public, the AMB, and the Osteopathic Board. The Board may also initiate a complaint on its own judgment, which it does when it receives notice that another regulatory board has taken action against a licensed homeopathic physician.

According to board procedures and practices, when a complaint is received, the Executive Director obtains any applicable medical records and a response from the physician and prepares an investigative report for the Board. The Board then reviews the complaint at a board meeting and decides whether the complaint involves homeopathic medicine and is within its jurisdiction. If the complaint does not involve homeopathic medicine or a physician with a homeopathic license, the complaint may not be within the Board's jurisdiction. If the Board believes that the complaint is within its jurisdiction and the physician is dually licensed with either the AMB or the Osteopathic Board, the Board will request primary jurisdiction from the other board. If the Board declines primary jurisdiction, it tables the complaint until the other board investigates and relies on the investigation of the other board. If the other board agrees to give the Homeopathic Board primary jurisdiction, the Board reviews the complaint again and either dismisses it, issues a nondisciplinary letter of concern, or invites the physician to an investigative interview to be conducted during the next board meeting. At this time, if the Board believes that additional investigation is necessary, it will assign a board member to conduct the additional investigative work.

If the Board decides after the investigative interview that there is enough evidence to merit disciplinary action, it may refer the complaint to an informal interview, after which it may impose discipline. If the Board imposes discipline after the informal interview, it can use one or more of the following options:

- Impose a monetary penalty between \$500 and \$2,000;
- Enter into a consent agreement with the physician restricting or limiting their practice or activities.
- Issue a decree of censure that constitutes an official action against the license and may include the restitution of fees to the patient;
- Impose probationary terms, which may include temporary suspension of the license for no more than 12 months, restriction of the license, and a requirement to pay restitution of fees to the patient.

If the Board believes that the homeopathic physician's license should be suspended or revoked, it can refer the complaint to a formal hearing. The Board can conduct this hearing or refer the complaint to the Office of Administrative

Hearings for a formal hearing. Upon a finding resulting from a formal hearing that the homeopathic physician committed a violation, the Board can suspend, restrict, or revoke the license.

Between fiscal years 2004 and 2006, the Board received 41 complaints. Of those, it dismissed 25 complaints, issued 5 letters of concern, and ceded jurisdiction to other Arizona health regulatory boards in 5 complaints. Six complaints remained open as of November 2006. During this time, the Board did not send any complaints to formal hearing.

Organization and staffing

The Board is staffed by a part-time Executive Director and contracts with the Department of Administration for administrative support. The Executive Director processes initial and renewal applications, including checking the license of each physician to ensure that no other boards have taken action against the physician, obtains physicians' responses and medical records for complaints, provides public information, tracks board finances, drafts the Board's rules, and works with the AMB and the Osteopathic Board regarding complaints with dual jurisdiction. The Executive Director position is a 0.75 full-time equivalent position. However, during November and December 2006, the position was reduced to between a 0.60 and 0.70 full-time equivalent position because the Board did not have sufficient resources to fully fund the position until its license renewal revenues were received.

The Board consists of six members appointed by the Governor to 3-year terms. Four must be homeopathic physicians, and two must be public members. Further, all six members must be a state resident for at least 3 consecutive years prior to appointment. Board members can serve up to three consecutive terms.

Operating budget

The Legislature appropriates monies to the Board from the Board of Homeopathic Medical Examiners Fund (Fund). The Fund contains revenues derived principally from licensure application and renewal fees. The Board deposits 90 percent of its revenues into the Fund and remits all of its monetary penalties and 10 percent of other revenues into the General Fund. Table 1 (see page 8) illustrates the Board's actual revenues and expenditures for fiscal years 2005, 2006, and 2007. In fiscal year 2005, board expenditures and remittances to the General Fund exceeded revenues by more than \$11,000, and in fiscal year 2006, expenditures and remittances exceeded revenues by nearly \$7,800, which has caused the Board's

Table 1: Schedule of Revenues, Expenditures, and Changes in Fund Balance
Fiscal Years 2005 through 2007
(Unaudited)

	2005	2006	2007
Revenues:			
Licenses and fees	\$71,475	\$80,400	\$123,500
Fines, forfeits, and penalties	2,000	2,250	1,600
Other	39	14	39
Total revenues	<u>73,514</u>	<u>82,664</u>	<u>125,139</u>
Expenditures and remittances to the State General Fund:¹			
Personal services and employee-related	58,924	59,227	60,700
Professional and outside services	14,567	18,432	20,894
Travel	845	1,029	249
Other operating	2,651	3,503	5,957
Equipment	273		81
Total expenditures	<u>77,260</u>	<u>82,191</u>	<u>87,881</u>
Remittances to the State General Fund ²	<u>7,351</u>	<u>8,270</u>	<u>12,513</u>
Total expenditures and remittances to the State General Fund	<u>84,611</u>	<u>90,461</u>	<u>100,394</u>
Excess (deficiency) of revenues over expenditures and remittances to the State General Fund	(11,097)	(7,797)	24,745
Fund balance, beginning of year	<u>49,468</u>	<u>38,371</u>	<u>30,574</u>
Fund balance, end of year	<u>\$38,371</u>	<u>\$30,574</u>	<u>\$ 55,319</u>

¹ Administrative adjustments are included in the fiscal year paid.

² As required by A.R.S. §32-2906, the Board remits 10 percent of all revenues to the State General Fund.

Source: Auditor General staff analysis of the Arizona Financial Information System (AFIS) *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for fiscal years 2005 and 2006, and AFIS Management Information System reports for fiscal year 2007.

fund balance to significantly decrease. As a result, the Executive Director's hours were further reduced until renewals were received, and board operations, including complaint processing, were limited from September through December of 2006.

In December 2006, the Board implemented an emergency rule to increase some of the Board's fees in order to address its budget shortfall. A.R.S. §41-1026 allows an agency to temporarily implement a rule without going through the regular rule review process if the agency determines that the change is necessary to protect the public health, safety, and welfare, and upon the Attorney General's approval. Because the Board did not have sufficient monies to perform its functions, it could not adequately protect the public, and in December 2006, the Attorney General approved the emergency rulemaking. As shown in Table 2, the Board increased the application fee, license renewal fee, and dispensing permit renewal fee for physicians, and the registration renewal fee for medical assistants. The rules are

From September through December 2006, the Board had to limit its operations because of budget shortfalls.

valid for only 180 days after approval, but in October 2006, the Board began the rulemaking process to permanently increase the fees. The Board had approximately \$55,000 by the end of fiscal year 2007. If the Board's rulemaking package is not approved, the Board estimates that its fund balance will be depleted by October 2008.

Scope and methodology

This performance audit and sunset review focused on whether there is a continued need for the Board, the Board's complaint investigation and adjudication processes, and the licensing process. This report includes findings and recommendations in the following areas:

- The Legislature should consider whether there is a need to continue the Board. If the Board is continued, the Legislature and the Board should address three issues, including inconsistency in the standards applied across Arizona's medical boards, public confusion about the type of therapies homeopathic physicians perform, and inconsistency in the Board's scope of practice and its name;
- If the Board is continued, it should take several steps to ensure that complaints are investigated and adjudicated in an appropriate and timely manner; and
- If the Board is continued, the Legislature and the Board should improve the licensing process to provide greater assurance that homeopathic physicians are adequately trained and continue to receive professional education.

In addition, this report contains an Other Pertinent Information section that provides information regarding the Board's licensing requirements related to physicians with a history of legal or disciplinary problems (see pages 41 through 42). This audit also includes responses to the 12 statutory sunset factors (see pages 43 through 51).

Table 2: Board Fees and Temporary Emergency Increased Fees As of May 2007

Physician	Fee	Emergency Fee ¹
Application	\$500	\$550
Issuance of License	250	
Renewal	600	975
Late renewal penalty	350	
Dispensing permit for pharmaceutical medicine	200	
Renewal of dispensing permit	150	200
Medical Assistant		
Initial application to supervise	200	
Triennial renewal application to supervise	50	
Annual registration renewal	100	200

¹ The emergency fees expired in June 2007. However, the Board initiated the rulemaking process to permanently increase its fees. As of June 2007, the Board reports that it filed a reactivation of the emergency rules. Neither the emergency rule fee renewal nor the permanent increase were approved as of June 2007.

Source: Auditor General staff analysis of Arizona Administrative Code R4-38-105 and the Board's emergency rulemaking package approved by the Attorney General's Office in December 2006.

During the audit, auditors received telephone calls and other correspondence from the public stating concern with board practices, and some stated that homeopathy should not be regulated. In addition, auditors reviewed the meeting minutes from the Board's 2006 sunset hearing and found a similar concern voiced by members of the public. According to the National Institutes of Health, the Food and Drug Administration (FDA) has learned of few reports of illness associated with homeopathic remedies and decided the homeopathic remedies were not likely to be the cause. In addition, the FDA regulates homeopathic remedies in the same manner as nonprescription or over-the-counter drugs. Based on audit work, auditors determined that the concern that homeopathy should not be regulated involved the use of homeopathic remedies by people who are not licensed physicians. Because the Board regulates only homeopathic physicians, the concern about the use of homeopathic remedies by nonphysicians is not addressed in this report. This report focused on the regulation of homeopathic physicians; auditors did not conduct audit work related to homeopathic medical assistants.

Auditors used various methods to study the issues addressed in this report. These methods included interviewing board members, the Board's Executive Director, the Board's Assistant Attorney General, the AMB's Executive Director and chairman, the Osteopathic Board's Executive Director and medical consultant, and stakeholders from industry and consumer groups; attending board meetings; and reviewing statutes, rules, and board meeting minutes from fiscal years 2004 through 2006. In addition, the following specific methods were used:

- To obtain information on the increased use of nontraditional medicine, auditors reviewed the National Institutes of Health's National Center for Complementary and Alternative Medicine Web site, a study of increased nontraditional medicine use, and a study on medical school education.^{1,2} To identify licensed practitioners who practice similar therapies, auditors reviewed the Web sites and statutes and interviewed representatives from four Arizona health regulatory boards and reviewed the American Dietetic Association's Web site.³ To determine the methods other states use to regulate nontraditional medicine, auditors reviewed the statutes and spoke with representatives from the Nevada State Board of Homeopathic Medical Examiners and the Connecticut Homeopathic Board. In addition, auditors reviewed the Web site for the Foundation for the Advancement of Integrative Medicine to identify states whose statutes allowed physicians to practice nontraditional medicine and reviewed the statutes for nine states.¹ Auditors also reviewed statutes for five other states, including Western states and states that use a similar structure of independent

1 Barnes, PM., E. Powell-Griner, K. McFann, and R.L. Nahin. *Complementary and Alternative Medicine Use Among Adults: United States, 2002. Advance Data From Vital and Health Statistics, no 343.* Hyattsville, MD: National Center for Health Statistics, 2004.

2 Barzansky, Barbara and Sylvia I. Etzel. Educational Programs in U.S. Medical Schools, 2002-2003. *Journal of American Medical Association*, Vol. 290(9), Sept 3, 2003: 1190-1196.

3 Auditors reviewed Web sites and statutes from the Acupuncture Board of Examiners, the Board of Chiropractic Examiners, the Board of Massage Therapists, and the Naturopathic Board of Examiners.

boards to regulate the professions.² To obtain input from homeopathic physicians, auditors spoke with a representative from the Arizona Homeopathic and Integrative Medical Association, as well as board members who are licensed homeopathic physicians.

- To evaluate the Board's complaint investigation and adjudication process, auditors reviewed all 41 complaints the Board received in fiscal years 2004 through 2006, attended board meetings; interviewed the Board's assistant Attorney General; reviewed the Board's complaint policy and flowchart; reviewed spreadsheets containing complaint information, including opening date, closing date, and disposition; and reviewed board meeting minutes for fiscal years 2004 through 2006. To identify methods other boards use to ensure that complaints are processed in a timely manner, auditors interviewed representatives from 9 Arizona health regulatory boards.³ To identify methods other Arizona health regulatory boards with one or fewer full-time equivalent positions use to separate investigation and adjudication, auditors interviewed representatives from three boards.⁴
- To evaluate the Board's licensing process, auditors reviewed all 23 licensing applications the Board received between fiscal years 2004 and 2006. To determine whether the examination process was adequate, auditors reviewed the written exam, observed three oral exams, and interviewed a private test consultant and a representative of a company that provides test validating services.
- To obtain information for the Introduction and Background, auditors reviewed the Office of the Auditor General 1985 sunset review of the Board (see Report No. 85-7), minutes from the 2006 legislative sunset hearing, information from the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2005, 2006, and 2007, the Governor's Office of Strategic Planning and Budgeting *Master List of Programs 2005-2007*, the Board's emergency rulemaking request to the Attorney General's Office, and the Attorney General's Office response.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the members of the Board of Homeopathic Medical Examiners and the Executive Director for their cooperation and assistance throughout the audit.

¹ Auditors reviewed statutes from Alaska, Florida, Georgia, Indiana, Massachusetts, New York, North Carolina, Ohio, and Washington.

² Auditors reviewed statutes from California, Colorado, Oklahoma, Oregon, and Texas.

³ Auditors interviewed representatives from the Acupuncture Board of Examiners, the AMB, the Board of Chiropractic Examiners, the State Board of Dental Examiners, the Naturopathic Board of Medical Examiners, the Board of Massage Therapists, the Board of Nursing, the Osteopathic Board, and the Physical Therapy Board.

⁴ Auditors interviewed representatives from the Board of Dispensing Opticians, the Board of Podiatry, and the Acupuncture Board of Examiners.

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FINDING 1

Legislature should consider best regulation method

The Legislature should consider whether there is a need to continue the Board. Homeopathic physicians remain concerned that regulation under other boards may discourage the use of nontraditional therapies, and the AMB and the Osteopathic Board do not embrace certain therapies authorized by the Board's statutes. However, a separate board may no longer be needed because of changes since the 1980s, such as increased access to the homeopathic therapies and increased tolerance from the medical community. In addition, Arizona is one of only three states with a separate board for homeopathy, and some other states have opted to leave responsibility with their medical boards while amending statutes to address nontraditional medicine. If the Legislature chooses to keep the Board, it and the Board have several regulatory issues to address, including inconsistency in the standards applied across Arizona's medical boards, public confusion about the type of therapies homeopathic physicians perform, and inconsistency between the Board's scope of practice and its name.

Several reasons exist for continuing Board

Several reasons exist for maintaining a separate board to regulate allopathic and osteopathic physicians who practice nontraditional medicine. The Board continues to receive support from homeopathic physicians and their patients, who assert that the therapies homeopathic physicians provide would no longer be available without the Board, and that the AMB and the Osteopathic Board do not embrace some of the therapies homeopathic physicians provide. In addition, homeopathic physicians are not required to maintain their allopathic or osteopathic licenses, and some have chosen to let those licenses lapse. Finally, homeopathic medical assistants are also registered by the Board.

The Board asserts that homeopathic physicians have a greater understanding of nontraditional medicine than allopaths or osteopaths.

Homeopathic physicians continue to support separate board—Board members and the Arizona Homeopathic and Integrative Medical Association (AHIMA), the primary medical association for nontraditional medicine in Arizona, continue to support the Board's existence and argue that eliminating it would have detrimental effects. First, according to some board members, the Board's presence increases access to medical care by allowing patients to see one physician for their care rather than seeing several different practitioners. Second, they argue that this increases continuity of care because one person is familiar with all of the patient's treatment. Finally, although the treatments are available from practitioners other than physicians, some board members assert that homeopathic physicians have a greater depth of medical knowledge and therefore a better understanding of the best way to treat disease or dysfunction.

AHIMA and the Board both assert that the AMB and the Osteopathic Board are still intolerant of homeopathic physicians. As a result, according to the Board's Executive Director, homeopathic physicians would not practice nontraditional therapies because of the fear that the AMB or the Osteopathic Board would discipline them or suspend or revoke their licenses. In addition, several patients of homeopathic physicians reported at the Board's January 2007 meeting that they believed that the Board was critical to ensuring that they could continue to obtain their healthcare of choice. According to board supporters, eliminating the Board would eliminate the patients' access to nontraditional care from physicians.

AMB and Osteopathic Board do not embrace some therapies—Although allopathic and osteopathic physicians are not restricted from practicing any of the therapies that the Homeopathic Board regulates, the use of chelation therapy is more strictly limited by the AMB and is not embraced by the Osteopathic Board, although some procedures may be within its standard of care. While the Homeopathic Board's, Osteopathic Board's, and AMB's statutes do not prohibit chelation therapy, in order to use it to treat anything other than heavy metal poisoning, the physicians licensed by any of the three boards must obtain informed consent and follow generally accepted experimental criteria. These include periodic analysis of results and peer review. The AMB's statutes also require the physician to obtain approval from the Food and Drug Administration before practicing chelation therapy. The Homeopathic Board's rules require the physician to submit protocols for the therapy to the Board, and the Board establishes a committee to review chelation therapy records every 5 years. Neither the AMB nor the Osteopathic Board has such a committee. In addition, the Osteopathic Board stated that it does not readily accept orthomolecular therapy as a recognized treatment in the osteopathic community; however certain treatments or procedures may be within its standard of care. The Osteopathic Board considers orthomolecular therapy, another treatment homeopathic physicians use, to be an experimental treatment that requires the physician to comply with statutory requirements for experimental therapies, according to the Osteopathic Board's medical consultant.

The Osteopathic Board reports that it does not readily accept orthomolecular therapy as a recognized treatment.

Some physicians do not maintain allopathic or osteopathic licenses—Statute does not require physicians to maintain their allopathic or osteopathic license after they obtain their homeopathic license, and auditors identified 21 in-state homeopathic physicians and 28 out-of-state homeopathic physicians who do not have active Arizona allopathic or osteopathic licenses. If the Board were not continued, these physicians would be left without a license to practice. The Legislature would need to decide how to address this issue. For example, the Legislature could require them to obtain either an allopathic or osteopathic license to continue to practice, allow them to be grandfathered in to the respective board that previously licensed them if their licenses are or were in good standing, or consider other options. In order to complete the process for obtaining either an Arizona allopathic or osteopathic license, these individuals would currently need to meet certain criteria. Specifically:

- **Obtaining allopathic licensure**—Homeopathic physicians with allopathic training can obtain licensure by endorsement from the AMB. To do so, the physician must submit an application to the AMB, including evidence of graduation from an approved medical school or its equivalent; passing scores on a board-approved test, and completion of a 12-month internship, residency, or fellowship; and the physician must not currently be under investigation by another board or have a revoked license in another jurisdiction. If the physician has not taken a written examination within the past 10 years, the AMB can require the physician to take a special purpose licensing examination. In addition, the Board may also conduct a records review and physical and psychological assessments, and may review the physician’s practice history to determine the applicant’s ability to safely practice medicine.
- **Obtaining osteopathic licensure**—Homeopathic physicians with osteopathic training can obtain an osteopathic license. According to the Osteopathic Board, it can require a short residency or a competency test to ensure that the physician is competent to practice osteopathic medicine. However, the Osteopathic Board reviews each application on a case-by-case basis.

Homeopathic medical assistants registered by Board—Homeopathic physicians currently register their medical assistants with the Board. If the Board were not continued, homeopathic medical assistants would no longer be registered. Although medical assistants are not registered by either the AMB or the Osteopathic Board, according to rules, physicians regulated by either board may employ medical assistants if they have received training as prescribed by rule. The Legislature could consider addressing the status of homeopathic medical assistants by either permitting homeopathic medical assistants to continue as such without requiring the training prescribed by rule for allopathic and osteopathic medical assistants, authorizing the AMB or Osteopathic Board to set up a registration system for such assistants as currently exists for the Homeopathic Board, or by taking no action, which would require homeopathic medical assistants to qualify under the existing AMB or Osteopathic Board rules.

Separate board may no longer be needed

Although the Board was created to address perceived intolerance for nontraditional care, a separate board may no longer be needed. Nontraditional medicine is more accepted in the medical field than it was in the 1980s, and the public can access all of the therapies the Board's statutes authorize from other types of health professionals, such as naturopaths, acupuncturists, and chiropractors. In addition, a separate board is an uncommon approach, and many states have opted to leave physicians who practice nontraditional medicine under the authority of their medical boards rather than creating a separate board to regulate physicians who practice nontraditional therapies.

Nontraditional medicine more accepted—Some research suggests that nontraditional medicine is more accepted than it was in 1981 when the Board was created. In addition, allopathic and osteopathic physicians are not restricted from practicing most of the therapies authorized by the Board's statutes in A.R.S. §32-2901(22). Specifically:

- **Nontraditional medicine use increased in the 1990s**—According to the Centers for Disease Control and Prevention, National Center for Health Statistics, the use of nontraditional medicine increased substantially in the 1990s. By 2002, approximately 36 percent of adults reported that they used some form of nontraditional medicine, excluding prayer, in the past 12 months, and approximately one-quarter of adults who used nontraditional medicine did so at the suggestion of a conventional medical provider.^{1,2} As of the 2002-2003 academic year, 98 out of 126 medical schools in the U.S. include nontraditional medicine as a topic in at least one required course during the 2002-2003 academic year, although there is no information on which departments are responsible for the courses or during which courses the subject is taught.³ In addition, Harvard and the University of Arizona have programs and research devoted to integrative medicine, which combines mainstream medical therapies and nontraditional therapies for which there is some high-quality scientific evidence of safety and effectiveness.

Ninety-eight out of 126 medical schools in the U.S. include nontraditional medicine in at least one course.

- ¹ The National Center for Complementary and Alternative Medicine, National Institute of Health, presented data in 2002 for the frequencies and age-adjusted percentages of adults 18 years and older who used complementary and alternative medicine, by type of therapy. The following therapies and their associated percentages represent the percentage of those in the study who used the therapy in the previous 12 months. Study participants could pick more than one therapy, so percentages listed below will not add up to 36 percent. The 36 percent represents the percentage of all adults who report using one or more of the therapies: Acupuncture-1.1, Ayurveda-0.1, Homeopathic treatment-1.7, Naturopathy-0.2, Chelation therapy-0.0, Folk medicine-0.1, Nonvitamin, nonmineral, natural products-18.9, Diet-based therapies-3.5 (which include Vegetarian diet-1.6, Macrobiotic diet-0.2, Atkins diet-1.7, Pritikin diet-0.1, Ornish diet-0.0, Zone diet-0.2), Megavitamin therapy-2.8, Chiropractic care-7.5, Massage-5, Biofeedback-0.1, Meditation-7.6, Guided imagery-2.1, Progressive relaxation-3, Deep breathing exercises-11.6, Hypnosis-0.2, Yoga-5.1, Tai chi-1.3, Qi gong-0.3, and Energy healing therapy/Reiki-0.5. Board members reported that these therapies were all available for use by licensees. Percentages for chelation and the Ornish diet should be used with caution.
- ² Barnes, PM. E. Powell-Griner, K. McFann, and R.L. Nahin. *Complementary and Alternative Medicine Use Among Adults: United States, 2002*. Advance Data From Vital and Health Statistics, no. 343. Hyattsville, MD: National Center for Health Statistics. 2004.
- ³ Barzansky, Barbara and Sylvia I. Etzel. Educational Programs in U.S. Medical Schools, 2002-2003. *Journal of the American Medical Association*, title 290, no. 9 (Sept. 3, 2003): 1190-1196.

- **Allopathic and osteopathic physicians can practice therapies authorized by homeopathic statutes**—Allopathic and osteopathic physicians licensed in Arizona are not statutorily restricted from practicing the therapies within the Board’s purview, and these physicians do not have to get board approval to do so. Neither the AMB nor the Osteopathic Board require physicians to report on the types of medicine they practice, so it is unknown how many allopathic or osteopathic physicians may be practicing such therapies without being licensed by the Homeopathic Board.

AMB and Osteopathic Board officials indicated that their boards are open to the use of homeopathic medicine. According to the AMB’s Executive Director and former board chairman, the AMB does not prohibit using any particular therapy. Instead, when a complaint is received, the AMB would investigate the complaint to determine if the physician followed appropriate protocols, such as reevaluating the diagnosis or switching to a different therapy if needed. The Executive Director also reports that the AMB is less likely to discipline a physician for using a nontraditional therapy if the medical records include written, informed consent. According to an Osteopathic Board representative, it is open to many forms of nontraditional therapy. The representative reported that some osteopathic physicians rely on acupuncture. The representative further stated that musculo-skeletal manipulation, which is similar to neuromuscular integration, is an osteopathic practice and is part of the curriculum in osteopathic medical schools.

Naturopathic physicians provide similar therapies—A.R.S. §32-2901(22) authorizes homeopathic physicians to practice many therapies in addition to homeopathy, and naturopathic physicians are authorized to practice the same or similar therapies as homeopathic physicians (see Table 3). For example, naturopaths can perform minor surgery limited to the repair of superficial wounds and the removal of foreign bodies and cysts with local anesthetic, and although statutes for naturopathic physicians do not specifically authorize orthomolecular therapy, naturopaths can intravenously

Table 3: Licensed and Other Professions Providing Therapies Comparable to Homeopathic Physicians As of June 2007

Profession	Number of Practitioners	Year Regulatory Board Established	Comparable Therapy
Acupuncturists	439	1998	Acupuncture
Chiropractors	2,777	1921	Acupuncture Neuromuscular Integration Nutrition
Dietitians ¹	65	N/A	Nutrition
Naturopaths	492	1935	All therapies

¹ Dietitians are not regulated by the State. The number reported is the number of dietitians in Arizona registered by the American Dietetic Association.

Source: Auditor General staff analysis of Arizona Revised Statutes, the American Dietetic Association Web site, and interviews with staff at Arizona health regulatory boards.

administer vitamins and minerals. According to the Naturopathic Board's Executive Director, this is the same thing as homeopathic orthomolecular therapy. Statute also allows naturopathic physicians to prescribe some pharmaceutical medicines, but they cannot prescribe controlled substances that have a high potential for abuse as identified in the federal Controlled Substances Act, except morphine and homeopathic preparations that are also controlled substances. As of June 2007, the Naturopathic Board reported that it had 492 licensees.

Although naturopaths can practice the same or similar therapies, they do not have the allopathic or osteopathic medical training that homeopathic physicians have. Several board members stressed that medical training is the most important difference between homeopathic and naturopathic physicians in Arizona. For example, one board member stated that naturopaths with some training in orthomolecular therapy do not have the necessary skills or training to do what homeopathic physicians do. Another board member stressed that it is not the authorized therapies that protect the public, but the medical training of the physicians who use the therapies.

Some therapies available from other types of providers—In addition to Arizona's allopathic, osteopathic, and naturopathic physicians not being restricted from practicing the therapies authorized by the Homeopathic Board, as shown in Table 3 (see page 17) and explained below, some of the therapies homeopathic physicians practice are also available from other practitioners who are not homeopathic, allopathic, naturopathic, or osteopathic physicians. These include:

- **Acupuncture**—The Acupuncture Board of Examiners licenses nonphysicians to practice acupuncture if they are certified by the National Commission for the Certification of Acupuncture and Oriental Medicine and receive 1,850 hours of training. As of June 2007, the Acupuncture Board reported that it had 439 licensees. In addition, the Board of Chiropractic Examiners certifies chiropractors to practice acupuncture after they receive 100 hours of training at an accredited chiropractic college and pass a board exam. As of March 2007, the Chiropractic Board reported that it had 383 licensees who were certified to practice acupuncture.
- **Homeopathy**—As of 2002, approximately 6,000 homeopaths from various backgrounds practice in the U.S.¹ However, in Arizona, nonphysician homeopaths must practice as homeopathic medical assistants under a physician's supervision. Under supervision of a licensed homeopathic physician, these nonphysician homeopaths may perform the same homeopathic treatments under the title of homeopathic medical assistant with the exception of psychotherapeutic procedures and some dispensing privileges.

1 Eisenberg, David M., Michael H. Cohen, Andrea Hrbek, Jonathan Grayzel, Maria I. Van Rompay, and Richard A. Cooper. Credentialing Complementary and Alternative Medical Providers. *Annals of Internal Medicine*. Vol. 137, Issue no. 12 (December 17, 2002): 965-983.

- **Neuromuscular integration**—Chiropractors perform a therapy similar to neuromuscular integration called chiropractic adjustment. This therapy involves applying force to improve joint mobility. According to the Board of Chiropractic Examiners, as of June 2007, there were almost 2,800 chiropractors licensed in Arizona. In addition, while massage therapists are prohibited in statute from providing neuromuscular integration, they can provide a similar type of treatment, such as hands-on therapy to increase wellness, relaxation, stress reduction, pain relief, and postural improvement, or provide general or specific therapeutic benefits. According to the Board of Massage Therapy, there were approximately 8,700 licensed massage therapists in Arizona as of February 2007.
- **Nutrition**—Statutes require chiropractors licensed in Arizona to have education in nutrition. In addition, the American Dietetic Association promotes medical nutrition therapy and lists 65 registered dietitians and dietetic technicians throughout Arizona.

Although other types of practitioners provide some of the therapies that homeopathic, osteopathic, allopathic, and naturopathic physicians provide, auditors did not identify any other practitioners who provide therapies similar to chelation therapy, minor surgery, orthomolecular therapy, or pharmaceutical medicine. In addition, some board members stressed that these providers do not have the medical training that homeopathic physicians have.

Separate board uncommon approach—Establishing a separate board has not been a common approach to regulating physicians who practice nontraditional medicine. Specifically:

- **Only two other states license homeopaths**—In addition to Arizona, Connecticut and Nevada both established homeopathic boards to license homeopathic physicians. Nevada established its board in 1983, and physicians who practice homeopathic medicine in Nevada are authorized to practice many of the therapies Arizona’s homeopathic physicians practice. According to Nevada’s board, as of April 2007, it had 37 licensed homeopathic physicians. Connecticut also established a homeopathic board, but its physicians can practice only classical homeopathy and are not authorized to practice any of the additional therapies Arizona’s homeopathic physicians can practice. According to the Connecticut Department of Public Health, as of December 2006, its board had 15 licensed homeopathic physicians.
- **Some states regulate nontraditional medicine in allopathic and osteopathic statutes**—Although Arizona, Nevada, and Connecticut have established boards, other states have opted to regulate nontraditional medicine through their allopathic and osteopathic physicians’ statutes.

Auditors identified at least 14 states that have statutes for medical boards to address allopathic and osteopathic physicians' practice of nontraditional medicine.¹ These statutes included specifying that using nontraditional methods is not unprofessional conduct, prohibiting boards from denying a license to an applicant because the physician practices nontraditional medicine, requiring oral or written informed patient consent when physicians provide nontraditional care, requiring at least one of its board members to be a physician who practices nontraditional medicine, and requiring the board to have a physician who practices nontraditional medicine review complaints involving nontraditional medicine. For example, Alaska, Colorado, Georgia, and Washington statutes state that using nontraditional medicine does not constitute either unprofessional conduct or professional incompetence. In addition, North Carolina and Oregon statutes do not allow their boards to revoke or deny a license, and Oklahoma statutes do not allow their board to deny a license based on the use of nontraditional medicine. Some states' statutes indicate that state citizens have the right to choose the type of healthcare they determine is most effective for them. For example, Florida's statute states that the legislative intent was that citizens should be able to make informed choices for any type of healthcare they deem to be an effective option.

Both the AMB and the Osteopathic Board report that they could resume regulating physicians who practice nontraditional medicine as both boards did prior to the Homeopathic Board's creation in 1981. The Federation of State Medical Boards (FSMB) published guidelines for state medical boards to use in educating and regulating physicians practicing nontraditional medicine in 2002. Although both boards report that they do not want their board's composition changed, both have stated that they would consider implementing the FSMB's guidelines or similar guidelines, and the AMB is in the process of forming a committee to develop and implement a policy on using nontraditional medicine similar to the FSMB's guidelines. The Legislature should consider whether a continued need for a separate board still exists, and if it does not, the Legislature should sunset the Board and return the responsibility of regulating physicians who practice nontraditional medicine to the AMB for allopathic physicians and the Osteopathic Board for osteopathic physicians.

¹ Alaska, California, Colorado, Florida, Georgia, Indiana, Massachusetts, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, and Washington.

Legislature and Board must address three regulatory issues if continued

If the Legislature chooses to continue the Board, the Legislature and the Board should take steps to address three regulatory matters that potentially limit protecting the public. First, the Board appears to allow conduct that the allopathic and osteopathic physician regulatory boards have determined is unsafe or unprofessional. Second, patients may not know that they are receiving nontraditional treatment because many of the homeopathic physicians also have an allopathic or osteopathic license. Finally, the Board's name, and therefore the name of the license it issues, could confuse people seeking homeopathic treatment because the Board's statutes authorize its licensees to practice several therapies in addition to homeopathy.

Board appears to allow conduct other boards do not—Of the 108 homeopathic physicians identified as having an active homeopathic license as of May 2006, auditors noted two cases in which a physician prevented from practicing by the AMB or the Osteopathic Board was allowed to practice by the Homeopathic Board. Concern arises because the statutes for homeopathic physicians allow them to do many of the things that allopathic and osteopathic physicians do. For example, they can perform minor surgery as well as prescribe pharmaceutical medicine, including controlled substances. In these two cases, the Homeopathic Board's actions appear at regulatory cross-purposes with the other boards' actions. Specifically:

- **Allopathic physician continues to practice although Arizona medical license revoked—**An allopathic physician had a medical license in Arizona in addition to several other states. In June 1994, California revoked his license for numerous reasons, including gross negligence, creating false medical records, and dishonesty. In addition, in May 1995, the physician was convicted in federal district court on 28 counts of mail fraud, 22 counts of making false statements, and 80 counts of making false claims. Subsequently, the AMB revoked his allopathic license in 1996. After Illinois and Pennsylvania reinstated his allopathic license and put him on probation, in 2004 the Homeopathic Board granted the physician a homeopathic license and put him on probation. To date, according to AMB, the physician has not reapplied to have his Arizona allopathic medical license reinstated, and his Arizona medical license remains revoked. However, with the homeopathic license, in Arizona he can perform minor surgery, prescribe pharmaceutical medicine, and perform numerous treatments on patients, including orthomolecular therapy and chelation therapy. The Homeopathic Board has the authority to determine whether a physician is sufficiently rehabilitated, and it

The Board licensed a physician whose Arizona allopathic license was revoked.

provided the physician with a way to work in Arizona without having to go before the AMB to request that his license be reinstated. As a result of the Board's action, the AMB's disciplinary action was nullified without AMB having the opportunity to deliberate on whether it believes the physician has been rehabilitated.

- **Former osteopathic physician continues to practice although the Osteopathic Board questioned competency**—In 1991, the Osteopathic Board received a complaint about a doctor using an experimental therapy without proper prior examination, history, physical, or lab work. In 1992, the Osteopathic Board reviewed a second complaint for medical incompetence with the same physician and questioned whether the physician had the basic medical knowledge required to be a physician and required the physician to take a competency exam. The physician refused to take the exam, and the Osteopathic Board revoked his license. Because his license was revoked for refusing to take the exam, the Osteopathic Board did not continue adjudicating either complaint.

After the Homeopathic Board reviewed the original complaint dealing with the experimental therapy, it entered into a consent agreement and put the physician on probation in 1993 with a requirement that he have his charts reviewed by the Board for all patients receiving bio-oxidative therapy, complete a risk management course, undergo a review of randomly selected charts from the physician's practice, and present evidence of having passed a general medical competency exam. The physician met all the probation requirements except for the medical competency exam. In 1995, the Board extended the consent agreement and required the physician to undergo a review of his records by another physician and obtain continuing education each year for 5 years. According to the Executive Director, the physician took the osteopathic general medical competency exam for the Homeopathic Board twice but he did not pass either time. However, the Homeopathic Board determined the physician was not medically incompetent and terminated the physician's consent agreement in 1999. To date, the physician has not passed the competency exam for the Osteopathic Board, his osteopathic license has not been reinstated, and he continues to practice with a homeopathic license, including participating on the Board's committee that reviews chelation therapy records. As a result, although the Osteopathic Board was unsure as to whether or not the physician was competent to practice, he continues to practice with many of the same privileges as his revoked license allowed.

A regulatory board's role is to protect the public health and welfare, and according to the Council on Licensure, Enforcement, and Regulation, if a profession or occupation is to be licensed, its scope of practice should be coordinated with existing statutes to avoid fragmented and inefficient service delivery. In these two cases, however, the Board's actions have contradicted other Arizona regulatory boards' actions. Therefore, if the Board is continued, the Legislature should consider forming a study committee comprising, at a minimum, members of the Board, the AMB, and the Osteopathic Board to determine the best way to help ensure that one board's actions do not negate or mitigate another board's actions, including any recommended statutory changes.

Public may not know treatment is nontraditional—The public could be confused by a physician who has both a homeopathic and an allopathic or osteopathic license and not understand if the treatment being provided is traditional or nontraditional. Currently, the Board recommends that physicians obtain written consent when using nontraditional procedures; however, there are no statutory requirements and the Board does not have a written policy requiring a written consent form, except for the use of experimental therapies. Some states that have chosen to leave regulation of nontraditional medicine with their allopathic or osteopathic regulatory boards rather than create a separate board have taken more extensive steps. Six of the 14 states' statutes that auditors reviewed include a requirement that an allopathic or osteopathic physician obtain either oral or written informed consent when providing a nontraditional treatment. Although the requirements regarding what should be in the informed consent vary by state, they include the physician's training in the procedure, the fact that the procedure is nontraditional or experimental, and the risks associated with the procedure. For example, Florida, Georgia, and Indiana require that the physician explain the risks of the nontraditional treatment, and California, Colorado, and Florida require that the patient be informed of the physician's education, experience, and credentials with the treatment. In addition, both the AMB's and the Osteopathic Board's Executive Directors suggested that people could misunderstand the type of treatment they were getting when a physician has both the homeopathic license and the allopathic or osteopathic license.

To ensure that the public is adequately informed of nontraditional treatments, the Board should determine what information should be included in a written, informed consent, then create a written policy detailing this information and require licensees to use it. The Legislature should then consider amending the Board's statutes to require homeopathic physicians to obtain written, informed consent from patients when they are providing nontraditional treatments.

Written, informed consent can help physicians ensure that patients understand that a treatment is nontraditional.

Board's current name does not reflect scope of therapies provided—The Board's name may confuse patients seeking nontraditional care because Arizona's statutory definition of homeopathic medicine includes therapies that are not traditionally part of homeopathy. The National Center for Complementary and Alternative Medicine defines homeopathy as an alternative medical system that seeks to stimulate the body's defense mechanisms and processes to prevent or treat illness. Treatment involves giving very small doses of substances called remedies that, according to homeopathy, would produce the same or similar symptoms of illness in healthy people if they were given in larger doses. However, Arizona's statutory definition of homeopathic medicine includes numerous other therapies that are not traditionally practiced in homeopathy. These include acupuncture, which is a traditional Chinese medicine, and neuromuscular integration, which is a musculoskeletal therapy similar to those used in osteopathic medicine. As a result of the broad range of therapies included in the definition of homeopathic medicine, people seeking a homeopathic physician could be confused to find that a licensee does not practice homeopathy, but one of the other therapies instead. Nevada's state legislature recently considered changing its homeopathic board's name to the Board of Complementary Integrative Medical Examiners. As stated earlier, Nevada's homeopathic board allows many of the therapies that Arizona's allows. If the Board is continued, it should identify a more appropriate name to describe the scope of the therapies its licensees are statutorily allowed to perform and request that the Legislature change the Board's name accordingly.

Recommendations:

1. The Legislature should consider whether there is a need to continue the Board. If the Board is not continued, the Legislature would need to determine how to address the issue of those homeopathic physicians left without a license to practice. For example, the Legislature could require them to obtain either an allopathic or osteopathic license to continue to practice, or allow them to be grandfathered in to the respective board that previously licensed them if their licenses are or were in good standing.
2. If the Board is not continued, the Legislature would need to determine how to address the issue of registering homeopathic medical assistants. For example, the Legislature could permit homeopathic medical assistants to continue as such without requiring the training prescribed by rule for allopathic and osteopathic medical assistants, authorize the AMB or Osteopathic Board to set up a registration system for such assistants as currently exists for the Homeopathic Board, or take no action, which would require homeopathic medical assistants to qualify under the existing AMB or Osteopathic Board rules.

3. If the Board is continued, the Legislature should consider:
 - a. Forming a study committee comprising, at a minimum, members of the Board, the AMB, and the Osteopathic Board to determine the best way to help ensure that one board's actions do not negate or mitigate another board's actions, including any recommended statutory changes; and
 - b. Amending board statutes to require homeopathic physicians to obtain written, informed consent from patients when they are providing nontraditional treatments.
4. If the Board is continued, it should:
 - a. Work with the AMB and the Osteopathic Board to ensure that one board's actions do not negate or mitigate another board's actions;
 - b. Determine what information a written, informed patient consent should include and create a policy requiring their licensees to use the informed consent; and
 - c. Identify a more appropriate name to describe its scope of practice and request that the Legislature change the Board's name to more accurately reflect the therapies its statutes authorize.

FINDING 2

Board needs to improve its complaint-handling practices

If the Board is continued, it should take steps to improve its complaint-handling practices. Resolving complaints against physicians who practice homeopathic medicine is important to protecting the public's health and well-being. However, the Board's complaint process may not adequately protect the public because the Board takes longer than the recommended length of time to resolve some complaints. This lack of timeliness stems from several factors, including failure to investigate complaints while jurisdiction is decided, conducting investigational interviews in board meetings, and a lack of time frames and monitoring. In addition, the Board does not always determine whether each allegation is substantiated in a complaint, which can allow doctors to continue with practices that may be harmful or do not meet the standard of care for homeopathic medicine.

Board's complaint handling untimely

Although the Board's complaint process includes requesting a response from the physician, requesting patient medical records, and preparing an investigative report for the Board to review, because of complaint processing delays the Board does not always ensure that the public is protected from physicians who may not be competent to practice. The Auditor General's Office has found that Arizona health regulatory boards should typically resolve complaints in 180 days or fewer. While the Board resolves most complaints within 180 days, many of the Board's complaints remain open longer than 180 days. For example, of the 41 complaints the Board received between fiscal years 2004 and 2006, more than one-third of these were open longer than 180 days as of November 2006.¹ Of the 41 complaints, 35 had been closed, 10 of which had been open between 183 and 673 days, and 6 remained open from 197 to 627 days. When complaint resolution is delayed, physicians who may be unfit to practice can continue practicing, and physicians who may need closer oversight do not quickly receive it. For example:

More than one-third of complaints received in fiscal years 2004 through 2006 were open longer than 180 days.

¹ The audit found that the Board had 46 files labeled complaint files for the 2004-2006 fiscal years. However, only 41 of these were actually complaints. The other 5 were lawsuits, a disclaimer, and information that the Board wanted to monitor, but did not constitute a complaint that the Board would adjudicate.

- **Complaint involving ability to safely practice remained open after 2 years**—In July 2004, the Florida Department of Health suspended a physician’s osteopathic license after it found him “unable to practice osteopathic medicine with reasonable skill and safety to patients due to his mental disorder.” In February 2005, when applying to renew his Arizona homeopathic license, the physician reported his mental disorder and the disciplinary action against his license in Florida. As a result, the Board opened a complaint in Arizona that same month. The Board reviewed the complaint at its July 2005 board meeting, and the assistant Attorney General advised the Board that it could send the complaint to a hearing or enter into a consent agreement. Instead, the Board chose to require the physician to submit to a psychological evaluation even though he had already undergone a psychological evaluation in Florida. The physician did not submit names of practitioners who could conduct the evaluation until October 2005, after which the Board requested that he submit further information on the qualifications of these practitioners. The Board received information on the qualifications of the practitioners in December 2005, but did not select one to perform the psychological evaluation until March 2006. The practitioner did not submit the evaluation to the Board until August 2006, more than 1 year after ordering the physician to undergo the evaluation and 1-and a-half years after the Board opened the complaint. At its September 2006 board meeting, the Board reviewed the complaint, including the additional psychological exam, and voted to offer a consent agreement to the physician requiring that the physician be placed on probation for 2 years, receive therapy, and work with restrictions. In February 2007, the Executive Director completed the consent agreement. It took her several months because she had not had time and because she is inexperienced in writing consent agreements. As of July 2007, the complaint remains open because the physician has not signed the consent agreement.

Several factors contribute to delays

The Board’s lack of timeliness in processing complaints results from several problems with its complaint process. First, the Board does not continue processing complaints while jurisdiction is decided in dual-jurisdiction complaints. Second, the Board holds its investigative interviews in board meetings, resulting in additional time being added to the process. Finally, the Board lacks time frames and mechanisms for tracking complaints to ensure that they are processed in a timely manner.

Board does not process complaints until other board determines jurisdiction—When a physician is dually licensed by the Board and the AMB or the Osteopathic Board, and the Homeopathic Board determines it has jurisdiction regarding the nature of the complaint, it should initiate an investigation rather than

wait for other boards' input. Instead, even when the Board believes it has primary jurisdiction, it does not investigate the complaint until the other board agrees that the Board has jurisdiction. Delaying complaint investigation while waiting for other boards to determine jurisdiction contributes to the Board's untimely complaint handling. In fact, 9 of the 16 complaints received between fiscal years 2004 and 2006 that were open longer than 180 days involved dual-jurisdiction complaints. These nine complaints involving dual jurisdiction averaged 349 days to close. For example:

Nine dual-jurisdiction complaints were open an average of 349 days.

- **Board waited 14 months to begin investigation**—The Board waited 14 months before initiating an investigation into a complaint concerning erroneous diagnosis of lupus of the brain and altering medical records. In November 2004, the Board received notice that the AMB was investigating a complaint for a physician both boards licensed. In January 2005, the Board determined that the allegations were mostly homeopathic, but tabled the complaint until the Executive Director could seek primary jurisdiction from the AMB. In March 2005, although the Board had determined that it had primary jurisdiction and the AMB agreed, the Board allowed the AMB to conduct a preliminary investigation into the complaint without beginning its own investigation. Five months later, in August 2005, the Board received the AMB's detailed chronological report concluding that the physician did not meet the standard of care for allopathic medicine. In September 2005, the Board tabled the complaint because it lacked medical records and further information. At its January 2006 board meeting, the Board began its primary investigation into the complaint, more than 1 year after receiving it. In September 2006, the Board dismissed the complaint.

According to board members, in cases where jurisdiction is unclear, the board members believed that they could not continue processing a complaint until the other board agrees that the Homeopathic Board had primary jurisdiction. However, although statute requires that a panel determine whether one or both boards will perform the investigation in cases where two boards believe they have jurisdiction, statute does not require that the Board delay its investigation until the other board agrees to cede primary jurisdiction. Therefore, when the Board believes that it has jurisdiction over a complaint, it should immediately begin its investigation to protect the public from potentially unsafe homeopathic physicians.

Investigational interviews held in board meetings—The Board may obtain additional information by interviewing the licensees before the full board during a regularly scheduled board meeting. This practice negatively affects the complaint process in two ways. Specifically:

- **Holding investigational interviews in board meetings further delays complaint process**—Statute allows board representatives to interview physicians under investigation. However, rather than appointing a board member or its

designee to conduct the investigative interview, the Board chose to conduct these interviews itself during board meetings. During fiscal years 2004 through 2006, the Board conducted investigative interviews during board meetings for eight complaints and seven of these eight complaints approached or exceeded the 180-day goal. Because the Board meets only every 2 months, approximately 60 days can be added to the complaint process for each complaint that receives an investigative interview during the board meeting. For example:

- **Board repeatedly delayed investigation in order to hold interview in board meeting**—In April 2005, the Board received a complaint with numerous allegations, including use of controlled substances. In July 2005, the Board asked the physician to attend the September 2005 board meeting for an investigational interview. However, the physician asked for the interview to be rescheduled or postponed at least three times for various reasons. For example, the physician planned to be out of town for one meeting, requested postponement because of medical reasons for another meeting, and could not attend two board meetings because of a post-operative regimen. The Board repeatedly rescheduled the investigational interview for the board meeting even though the physician offered to meet at another time. As a result, the investigative interview was delayed for more than a year when it was held at the March 2006 board meeting. The Board then dismissed the complaint.
- **Investigating and adjudicating in board meeting may give biased appearance**—The Board conducts an investigational interview when it believes it needs additional information to adjudicate the complaint. When the Board requests an investigational interview, the physician attends a board meeting and is questioned by board members. Auditors reviewed board meeting minutes that addressed complaints received in fiscal years 2004 through 2006 and found eight occasions where the full board conducted investigational interviews during the board meeting. This action, in addition to adding time to the complaint process, creates a further problem because the Board cannot ensure that all board members then appear objective when adjudicating the complaint.

The Board's practice conflicts with suggested practices the Arizona Attorney General's Office established implying that decision-makers such as board members involved in adjudicating a complaint should not participate in investigating a complaint. Although many boards question licensees in a board meeting, it is after an investigation is completed and not part of the investigation. According to the Executive Director, the Board holds investigational interviews during board meetings because that is how it was always done. However, when the entire board is present for the investigative

interview, the whole board is participating in both the investigation and adjudication process. According to the Attorney General's *Arizona Agency Handbook*, one board member can conduct the investigative interview and then recuse himself or herself from complaint adjudication.

The *Arizona Agency Handbook* allows one or more board members to hold investigative interviews outside of board meetings. To improve timeliness and ensure complaint investigation and adjudication are separate, the Board should discontinue conducting investigative interviews during board meetings and instead assign one board member, or a designee, to conduct the interview outside the meeting. This board member should then be recused from adjudicating the complaint to avoid the appearance of bias.

Investigative interviews can be held outside of board meetings.

Lack of time frames and monitoring furthers delays—Although the Board has defined the basic steps for investigating a complaint, it has not established time frames for all of the steps in the complaint process. Board policy requires that the Board inform the AMB or Osteopathic Board within 10 days if it receives a complaint regarding a dually licensed physician, and it requires that physicians respond to its request for information on a complaint within 10 days. However, board policy does not define time frames for any additional steps in the complaint process.

In addition, the Board does not have a system to track complaint status. Without time frames and a system to track and monitor complaints, the Board cannot ensure it processes complaints in a timely manner or easily determine complaint status. For example, one complaint involving the unlicensed practice of homeopathic medicine received in July 2005 was not processed for approximately 1 year because the physician never responded to the Board's initial letter. While compiling a spreadsheet of all complaints for this audit, the Executive Director rediscovered the complaint and placed it on the Board's July 2006 agenda.

The Board lacks a complaint monitoring system.

According to the Executive Director, the Board lacks the resources to contract for the design and implementation of a complaint-monitoring system. However, as previously mentioned, for this audit the Executive Director prepared a spreadsheet identifying complaint information dating back to fiscal year 2004. Given the Board's small size and limited number of complaints, such a system does not need to be elaborate. The spreadsheet captured the date the complaint was received, the date it was reviewed in the board meeting, and the disposition of the complaint. The Board can expand this recently created spreadsheet to include key steps in the complaint process and then use it to regularly monitor complaints and provide information to the Board on the complaint status. In addition, the Board should develop time frames for key steps in the complaint process. It could then use the spreadsheet to monitor complaints to ensure that it processes them within 180 days, as our Office suggests.

Board does not address all complaint allegations

During board meetings the Board does not always decide whether or not each allegation was substantiated as part of adjudicating the complaint. According to board meeting minutes from fiscal years 2004 through 2006 and auditors' review of complaint files, in two of eight complaints involving quality of care, the Board did not discuss each of the allegations and determine whether the physician met the standard of care in providing treatment. As a result, doctors could continue with practices that may be harmful or do not meet the standard of care for homeopathic medicine. For example:

- **Complaint dismissed without considering misdiagnosis allegation**—In March 2005, the Board received a complaint alleging two violations—misdiagnosing a patient's condition and violating an order from the AMB not to use experimental treatments by using chelation therapy. The Board's discussion of the complaint revolved around the fact that chelation therapy was allowed under its statutes and dismissed the complaint. The Board did not determine whether the misdiagnosis allegation was substantiated.
- **Complaint dismissed without considering adequacy of patient records**—In January 2004, the Board opened a complaint against a physician who was licensed to practice homeopathic medicine in Arizona and allopathic medicine in Wisconsin. The complaint was opened because Wisconsin had censured the physician's allopathic license. The Wisconsin Medical Examining Board found that the physician had not maintained adequate records when using chelation therapy as an experimental procedure. As a result, the Wisconsin board required the physician to undergo education related to patient records and to have his records reviewed by another physician for 2 years. The Board investigated the complaint, and according to the written meeting minutes, it dismissed the complaint after one board member noted that the physician had been sanctioned for performing chelation therapy, which is a recognized homeopathic therapy in Arizona. However, Arizona statute requires physicians who practice chelation therapy to keep detailed records when using chelation therapy. There is no evidence in the board meeting minutes or complaint file showing that the Board determined whether the allegation of inadequate patient records associated with providing chelation was substantiated.

The Board could benefit from developing a form to ensure that it determines whether or not each allegation is substantiated before it decides on the appropriate action for the complaint. The Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (NCIA) has such a form for adjudicating its complaints. The NCIA form includes steps such as identifying violations of law, evaluating sufficiency of evidence associated with each allegation, choosing the Board's options for action in adjudicating each

allegation, and wording for a proposed motion. To ensure all complaint allegations are addressed and acted upon, the Board should develop a form that includes each allegation and the Board's options for the allegation, then have board members use it when adjudicating complaints.

Recommendations:

1. The Board should take several steps to help ensure that its complaint process protects the public. These steps should include:
 - a. Immediately beginning the complaint investigation upon the Board's decision that it has primary jurisdiction in a complaint;
 - b. Designating one board member or a designee to conduct investigative interviews outside of the board meeting. The assigned board member should then recuse him- or herself from complaint adjudication;
 - c. Developing time frames for key steps in the complaint process to help ensure complaints are processed within 180 days; and
 - d. Enhancing the complaint-tracking spreadsheet to include key steps in the complaint process and continuing to use the complaint-tracking spreadsheet to monitor complaint status and ensure that they are processed within 180 days.
2. The Board should develop a form it can use to ensure that it addresses and adjudicates every complaint allegation. The form should include information such as all allegations involved in the complaint, the Board's available options, and proposed wording for complaint motions.

FINDING 3

Licensure does not ensure competency in authorized therapies

If the Board is continued, the Legislature and the Board should take steps to ensure that licensees are sufficiently qualified to practice. Although the homeopathic license authorizes physicians to use specific therapies, the Board lacks authority to ensure that licensees are qualified to practice these therapies. Specifically, physicians can practice all of the therapies whether or not they have been trained in them, and the written and oral exams do not ensure a physician's knowledge of the therapies as they are not comprehensive and have not been validated, and the oral exam is not confidential. In addition, statute does not require continuing education for homeopathic physicians, which means homeopathic physicians may not receive updated training in their field.

Board lacks authority to ensure licensees qualified to practice specific therapies

Although A.R.S. §32-2901(22) identifies several different therapies that homeopathic physicians can practice, the Board lacks clear authority to ensure that licensees are qualified to practice those therapies. Specifically, the homeopathic license enables physicians to practice specific therapies without education in those therapies. The Board does not limit a physician's practice to only those therapies in which the applicant is educated, apparently because the Board's statutes do not specifically allow such a limitation. The homeopathic license application asks which therapies the applicant plans to practice and if the applicant is certified by a credentialing authority, such as the Council on Homeopathic Certification or the National Certification Commission for Acupuncture and Oriental Medicine. However, regardless of whether physicians are knowledgeable and trained in all of the therapies, the Board does not have clear authority to restrict a physician's license to practice only those therapies he or she is trained in. Consequently, homeopathic physicians can practice therapies in which they have not been trained.

In July 2005, the Board implemented a rule requiring a minimum number of training hours and/or a certificate for each therapy or modality an applicant wished to practice. This rule applies only to physicians who do not have a degree in homeopathy. However, the Board lacks clear statutory authority to limit a homeopathic physician's scope of practice based on education and training. Therefore, to ensure that homeopathic physicians are sufficiently trained in the therapies they practice, the Legislature should consider amending A.R.S. §32-2912 to permit the Board to limit a physician's practice to the therapies a licensee is educated in.

Exams inadequate

The Board's written and oral exams do not ensure that licensees have adequate knowledge to practice all therapies. For example, although homeopathic physicians are licensed to practice six therapies, neither the written nor the oral exam covers all six therapies.¹ In addition, the written exam has never been validated and the oral exam is not kept confidential.

Exams not comprehensive—Neither the Board's written or oral exam ensures that applicants have sufficient knowledge to practice all the therapies allowed under Arizona's homeopathic license. The written exam consists of 100 questions about homeopathy and must be completed within 3 hours with 70 percent accuracy. However, the exam does not test physicians on any of the other therapies authorized in the statute, such as orthomolecular therapy, chelation therapy, or nutrition. According to a board member involved in writing the exam, this is because the Board believed that since "homeopathy" is in the Board's name, the Board should ensure that the licensees are well-versed in homeopathy. In 2003, board members developed written questions on acupuncture, chelation, orthomolecular therapy, neuromuscular integration, and nutrition. However, according to the Executive Director, the Board could not use these new questions until rules defining educational requirements went into effect. The education rules went into effect in July 2005, yet as of January 2007, the test questions had not been implemented. According to the Executive Director, this was because of a lack of time and financial resources.

In addition to the written exam, the Board's rules require applicants to undergo an oral exam in which the applicant summarizes the clinical management of a sample case before the Board. The Board developed seven case studies, and it selects one of the seven to test each applicant. However, the Board does not require the applicant to discuss all of the therapies as part of the case study. Depending on the case study an applicant receives, knowledge of some or all of the therapies may not be expressed through the answer. Auditors observed three oral exams, and in all three instances, board members stated during their questioning that the

Neither the written nor oral exam adequately assesses the applicant's knowledge of authorized therapies.

¹ Although minor surgery and pharmaceutical medicine are included in the definition of homeopathic medicine, they are excluded from this analysis because these two therapies are commonly practiced among allopathic and osteopathic physicians, and to get a homeopathic license, an applicant must have an allopathic or osteopathic license.

applicant could have discussed an additional therapy as part of the answer. In response, two of the applicants specifically stated that they did not have enough training to use therapies they did not discuss. However, they would not be restricted from practicing any of these therapies. As a result, the oral exam may not provide assurance of an applicant's qualifications to practice therapies.

As a result of the deficiencies in the written and oral exams, the Board cannot be certain that licensees are sufficiently knowledgeable in all the therapies to practice them. Prior to allowing their licensees to practice therapies, the Chiropractic Board and Naturopathic Board require applicants to pass a national exam. For example, to practice acupuncture, the Chiropractic Board requires licensees to pass a 3-hour exam on acupuncture developed by the National Board of Chiropractic Examiners. In Arizona, naturopaths can practice acupuncture and homeopathy, and the Naturopathic Board requires its applicants to pass the North American Board of Naturopathic Examiners licensing exams for homeopathy and acupuncture in addition to passing other naturopathic tests. Because the Board does not have a national body that it relies upon to develop its exams, it should take steps to develop and implement comprehensive written and oral exams that cover all of the therapies the homeopathic license authorizes.

Additional problems exist with exams—In addition to not testing applicants on all of the therapies, two other issues compromise the exams' integrity. Specifically:

- **Written exam has not been validated**—The written exam has never been validated to ensure that its questions adequately test the applicant's knowledge of homeopathy. According to the Executive Director, the Board's licensing exam was written before 1999 and was not tested for validity. Without validation, this exam may not accurately assess a physician's ability to practice homeopathy. In addition, although the Board wrote new test questions in 2003, the Board needs to ensure that they are validated before implementing them. According to the Executive Director, the new test questions have not been validated because of financial resources. The *Attorney General's Arizona Agency Handbook* says that an agency developing its own exams should carefully ensure that the content and structure of each question, the method of evaluating the answers, and the area of knowledge examined fulfill the examination's statutory purpose. The Board should identify resources and then ensure that a qualified person or organization evaluates the test or tests it uses. For example, a private consultant could guide the Board in taking the steps necessary to validate the exam or a private company could validate the exam.
- **Oral exam answers not confidential**—The oral exam is not considered a confidential record by statute and is conducted during the regular session of board meetings. During an open session of the board meeting, the applicant

Oral exams are conducted in open session of the board meetings.

summarizes the case example and describes how he or she would treat the person described in the case. Board members' questions and comments follow. Auditors observed three oral examinations in one board meeting and found that the board and physicians provided enough information for someone with medical knowledge to deduce the question and what the Board expects in the answer. If the Board tested seven applicants in one board meeting, all of the case studies developed by the Board could potentially be available to the public. As a result, the confidentiality of the answers to the oral exam is compromised. Of the nine other health regulatory boards auditors contacted, only one, the Board of Podiatry Examiners, uses an oral examination to determine an applicant's knowledge. This board keeps its exam confidential by holding it in closed session. It can do so because A.R.S. §32-825(F) specifies that exam materials are confidential. The *Attorney General's Arizona Agency Handbook* advises that boards should ensure the exam process integrity, limit actions for administrative review, adopt written procedures for conducting and reviewing exams, and adopt these in rule. The Board should seek a statutory change to classify the oral exam as a confidential record so that it can be conducted in executive session.

Table 4: Continuing Education Requirements by Health Regulatory Board As of June 2007

Board	Continuing Education Hours
Acupuncture Board	15 per year
Arizona Medical Board	40 every 2 years
Chiropractic Board	12 per year
Massage Therapy Board	25 every 2 years
Nursing Board	None ¹
Osteopath Board	40 every 2 years
Naturopathic Board	30 per year
Physical Therapy Board	20 every 2 years
Dental Board	72 every 3 years

¹ According to the Nursing Board, rather than require continuing medical education hours, it uses a continued competency requirement that requires nurses to work a minimum of 960 hours every 5 years in order to renew their licenses.

Source: Auditor General staff review of Arizona Revised Statutes and Arizona Administrative Code for Acupuncture Board of Examiners, Arizona Medical Board, Board of Chiropractic Examiners, Board of Massage Therapy, Board of Nursing, Board of Osteopathic Examiners of Medicine and Surgery, Naturopathic Physicians Board of Medical Examiners, Board of Physical Therapy, and Board of Dental Examiners.

and adopt these in rule. The Board should seek a statutory change to classify the oral exam as a confidential record so that it can be conducted in executive session.

Board lacks continuing education requirements

Unlike other Arizona health regulatory boards, the Board's statutes do not require homeopathic physicians to obtain continuing education to renew their licenses. As shown in Table 4, eight of the nine health regulatory boards that auditors contacted have statutes and/or rules requiring continuing education for licensees.¹ Without a continuing education requirement, homeopathic physicians may not be educated in their field's most recent developments. Board members believe that nontraditional medicine changes quickly and that it is important for homeopathic physicians to stay abreast of changes in the field. Although homeopathic physicians are required to have an allopathic or osteopathic license to obtain their homeopathic license, and the AMB and Osteopathic Board require their licensees to obtain continuing education, homeopathic physicians are not required to maintain that license to continue to be a licensed homeopathic physician. As a result, homeopathic

¹ Although eight of nine boards required annual, biannual, or triennial continuing medical education for all licensees, the Board of Nursing was excluded from this number because rather than requiring continuing education hours, they have a continued competency requirement that requires nurses to work a minimum of 960 hours every 5 years in order to renew their licenses.

physicians who no longer hold an active allopathic or osteopathic license are not required to obtain any continuing education. In addition, although allopathic and osteopathic physicians are required to receive continuing education, that education does not have to include any of the therapies the homeopathic license authorizes.

During the course of the audit, the Board formed a subcommittee to develop continuing education requirements for homeopathic physicians and plans to request that the Legislature amend the Board's statute during the 2008 legislative session. The Board should continue to develop continuing education requirements. The Legislature should then consider amending board statutes to require continuing education for its licensees based on the Board's subcommittee's research results.

Recommendations:

1. To ensure that homeopathic physicians are sufficiently trained in the therapies they are licensed to practice, the Legislature should consider amending A.R.S. §32-2912 to permit the Board to limit a physician's practice to the therapies a licensee is educated in.
2. The Board should take steps to ensure that its written and oral exams are adequate by:
 - a. Developing comprehensive written and oral exams that include questions covering all of the therapies authorized by the license, and
 - b. Identifying resources and ensuring that a qualified person or organization evaluates the exams to ensure that they sufficiently test an applicant's knowledge of the therapies the license authorizes.
3. To preserve the oral exam's integrity, the Board should seek a statutory change to classify the oral exam as a confidential record so it can be conducted in executive session.
4. To ensure its licensees are educated on their field's most recent developments, the Board should continue to develop continuing education requirements for its licensees and provide its recommendations to the Legislature.
5. Once the Board finalizes its continuing education requirements, the Legislature should consider amending the Board's statutes to require continuing education for its licensees based on the Board's subcommittee's research results.

OTHER PERTINENT INFORMATION

During this audit, other pertinent information was obtained related to the Board's licensing of felons in response to newspaper articles published in October 2005 raising concerns about the Board's licensing practices.

Board statutes allow discussion of past misconduct

According to the Board's statutes, to obtain a homeopathic license a physician must be of good moral character; have a professional record that indicates that a license to practice medicine has not been refused, revoked, suspended, or restricted in any way; and have a professional record that indicates the applicant has not engaged in any conduct that would constitute grounds for disciplinary action against the homeopathic license. However, statute also states that if the applicant has committed an act or engaged in conduct that would constitute grounds for disciplinary action, the Board shall determine to its satisfaction that the conduct has been corrected, monitored, and resolved. As a result, the Board can evaluate an applicant for a homeopathic license who had past misconduct and license that applicant if it determines that the applicant has corrected the conduct.

The Board has received licensing applications from physicians who have engaged in conduct that would be grounds for disciplinary action under the Board's statutes. Between fiscal years 2004 and 2006, the Board considered 23 applications for homeopathic physicians. Nine applications involved physicians who had a revoked osteopathic or allopathic license that had subsequently been reinstated, a letter of concern, psychological concerns, or an open complaint in another state, including two physicians with felony convictions. The Board eventually licensed both of the physicians with felony convictions after discussing their cases in public board meetings. Of the other 9 applicants, 5 were issued a license. The other 4 were denied a license, 3 of which were because the applicants withdrew their applications and 1 because the physician did not have an active osteopathic or allopathic license.

Nine of 23 applications received in fiscal years 2004 through 2006 involved a physician with past disciplinary or criminal history.

Other Arizona health regulatory boards have statutory language similar to the Board's. Like the Board, the AMB and the Osteopathic Board have statutory language that allows them to consider whether the past misconduct has been corrected. According to the AMB, it did not license any applicants with felony convictions in fiscal years 2004 through 2006. Further, the AMB does not license applicants with a revoked license in another state. According to the Osteopathic Board, it has licensed some physicians with felony convictions in the past, but the specific information was not readily available from its licensing database.

Although most Arizona health regulatory boards do not have specific language in their statutes regarding prerequisites for licensing applicants with felony convictions, statutes for Arizona's Board of Nursing and Board of Massage Therapy bar applicants with felony convictions from being licensed until 5 years after initial conviction or after they have completed their sentences for the conviction, and statutes for the Osteopathic Board require applicants who have had a revoked license to wait 2 years to apply for a license.

SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Board of Homeopathic Medical Examiners (Board) should be continued or terminated.

1. The objective and purpose in establishing the Board.

The Board was established in 1980 under A.R.S. §32-2904 to protect the health, safety, and welfare of Arizona citizens by licensing and regulating physicians who practice homeopathic medicine and also to address perceived intolerance for nontraditional care from the Arizona Medical Board (AMB), which licenses physicians. Homeopathy is “based on the idea that substances that produce symptoms of sickness in healthy people will have a curative effect when given in very dilute quantities to sick people who exhibit those same symptoms.”¹ The Board also registers homeopathic medical assistants and issues dispensing permits for drugs to homeopathic physicians. The Board has six members whom the Governor appoints to 3-year terms and includes four physicians licensed to practice homeopathic medicine and two public members.

The Board’s mission is “to protect the public health, safety, and welfare by regulating allopathic and osteopathic physicians who apply for a homeopathic medical license and registering homeopathic medical assistants that work under the supervision of licensed homeopathic physicians that practice within the State of Arizona.” To accomplish this mission, the Board has established three goals: (1) to issue, renew, or deny licenses, permits, and registrations in a timely manner; (2) to receive, investigate, and adjudicate complaints consistent with the published time frames of the Board; and (3) to collect, update, and deliver information in a timely manner concerning licensees’ location, practice therapies, and status for the public record.

¹ “Homeopathic medicine.” *The Gale Encyclopedia of Medicine*. 3rd ed. Ed. Jacqueline L. Longe, Vol. 3, Farmington Hills, MI: Thomson Gale, 2006.

2. The effectiveness with which the Board has met its objectives and purpose and the efficiency with which it has operated.

The Board needs to improve its operations to effectively license and regulate homeopathic physicians and fulfill its other responsibilities. The Board reviews applications for initial and renewal licensure for homeopathic physicians, drug dispensing, and initial and renewal registrations for homeopathic medical assistants. It also processes complaints against licensees. According to the Executive Director, as of May 2007, it processed 4 initial licenses and renewed 100 licenses. In addition, it renewed 50 dispensing permits, and registered 16 new homeopathic medical assistants and renewed 27 assistants. The Board has processed its licensees' applications in a timely manner.

However, this audit found that the Board needs to improve the timeliness of its complaint investigation and adjudication process. Auditors' review of complaints found that out of the 41 complaints the Board received between fiscal years 2004 and 2006, more than one-third were open for more than 180 days, and as of November 2006, 6 were still open. Those complaints that were still open had been open for 197 to 627 days. In addition, the Board needs to ensure it addresses and adjudicates each complaint allegation. The Board did not always decide whether or not each allegation was substantiated as part of adjudicating the complaint. According to board meeting minutes from fiscal years 2004 through 2006, in 2 of 8 complaints involving quality of care, the Board did not discuss each of the allegations and determine whether the physician met the standard of care in providing treatment. As a result, doctors could continue with practices that may be harmful or do not meet the standard of care for homeopathic medicine (see Finding 2, pages 27 through 33).

3. The extent to which the Board has operated within the public interest.

The Board has generally operated in the public interest in providing a licensing and complaint process for people who practice and receive homeopathic medical care, but should take additional steps in this regard. The Board has a Web site that it routinely updates to provide better access to information on homeopathic physicians, application forms, statutes and rules, and board meeting minutes. This Web site also contains information about the complaint process and how to file a complaint with the Board. The Board also maintains an audio copy of meeting minutes, which is available for review in the Board's office for 4 years following the meeting. In addition, in December 2006, during the license renewal process, the Board sent a letter to its licensees informing them of the emergency fee increase, and in January, the Board sent a notice of the proposal to permanently increase fees.

However, this audit found several additional areas in which the Board could better serve the public interest. Specifically:

- The Board's licensing process should ensure that its licensees are sufficiently qualified to practice specific therapies and homeopathic medicine in general. The Board lacks clear statutory authority to ensure that its licensees are qualified to practice specific therapies such as acupuncture, chelation therapy, homeopathy, minor surgery, neuromuscular integration, nutrition, orthomolecular therapy, and pharmaceutical medicine. In addition, neither the Board's written or oral exam ensures that applicants have sufficient knowledge to practice all the therapies allowed under Arizona's homeopathic license, and the written exam has not been validated. The oral exam is also not kept confidential. Finally, the Board does not require continuing education for its licensees. To ensure homeopathic licensees are qualified to practice, the Legislature should consider amending the Board's statutes to (1) provide the Board clear statutory authority to ensure licensees are qualified to practice specific therapies and (2) require continuing education for its licensees. In addition, the Board should take the following steps to ensure its licensees are qualified to practice: (1) develop and validate comprehensive written and oral exams, (2) ensure the confidentiality of the oral exam, and (3) continue to develop continuing education requirements (see Finding 3, pages 35 through 39).
 - The Board should ensure its Web site information is complete and accurate. The Board's Web site does not contain all of the Board's application forms on-line, which results in additional workload for the Executive Director with applicants contacting the board office for additional information. In addition, the Board's Web site had an incorrect version of the rules. In response to auditors' notifying the Board, the correct rules were put on the Web site.
 - The Board's Web site also does not include information on disciplinary actions against its licensees. Instead, people need to contact the Executive Director to learn about disciplinary actions against licensees, although this may be inconvenient because she works only 30 hours a week. Since the Board does not have a complaint database, all information is retrieved from paper files. This could limit the availability of the information given to the public.
4. **The extent to which the rules adopted by the Board are consistent with the legislative mandate.**

The Board has not promulgated all rules required by statute. At the request of the Auditor General's Office, the staff of the Governor's Regulatory Review Council (GRRRC) reviewed the Board's rules in September 2006 and determined that the Board had not established rules for some required subjects. For example, GRRRC found that the Board did not have a rule for A.R.S. §32-

2912(D)(4), which requires the Board to approve internships but does not address the standards to be used by the Board in approving internships. In addition, A.R.S. §32-2951(G) requires rules regarding the labeling, recordkeeping, storage, and packaging of drugs. However, the Board's rule R4-38-206, which states that "a dispensing homeopathic physician shall dispense a controlled substance or prescription-only pharmaceutical drug in a light-resistant container with a consumer safety cap. . .," does not address the labeling, recordkeeping, or storage of drugs.

5. The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

The Board followed requirements for filing notices and allowing public comment when it amended its rules concerning initial licensing and renewal fees for physicians and medical assistants in 2005. This included filing the formal notice of rulemaking with the Secretary of State's Office and providing for a period of public review and comment. Although the Board did not report to auditors that it used any other methods to encourage public input when developing its proposed rules and regulations, such as its Web site or a newsletter, it notified its licensees of proposed fee changes when renewal letters were sent to them.

The Board has also complied with the State's open meeting laws. The Board has posted public meeting notices at least 24 hours in advance at the required location, made agendas available to the public, maintained meeting minutes, and has the required statement of where meeting notices will be posted on file with the Secretary of State.

The Board has appropriately filed notices with the Office of the Secretary of State regarding its rulemaking. An emergency rulemaking proposal was initiated in September 2006 to address the Board's plan to increase licensing and renewal fees to counter the lack of funds available for the Board's continued operation. In December 2006, the Attorney General approved the emergency rulemaking; however, the rules are only valid for only 180 days after approval. Hence, in October 2006, the Board began the rulemaking process to permanently increase the fees.

6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.

Statute provides the Board authority to investigate and resolve complaints. However, the Board needs to improve its complaint-handling practices. The Board has not investigated all complaints in a timely manner. Specifically, of the 41 complaints the Board received between fiscal years 2004 and 2006, more than one-third of these were open longer than 180 days as of November 2006.

To improve the timeliness of complaint investigations, the Board should immediately begin the complaint investigation upon the Board's decision that it has jurisdiction, discontinue holding investigative interviews in board meetings, develop time frames, and monitor complaints. The Board also needs to ensure it addresses all complaint allegations (see Finding 2, pages 27 through 33).

In addition, the Board should address some regulatory issues. For example, the Board appears to allow conduct that the Arizona Medical Board (AMB) and the Board of Osteopathic Medical Examiners (Osteopathic Board) do not allow. Specifically, in two dual-jurisdiction cases where the AMB or Osteopathic Board revoked the physician's license, the Board took limited action against these same physicians and allowed them to continue practicing under the homeopathic license. (See Finding 1, pages 13 through 25).

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under enabling legislation.

A.R.S. §41-192 authorizes the Attorney General's Office to represent the Board and provide necessary legal services. In addition, A.R.S. §32-2940(A) states that the Board may seek injunctive relief through the Attorney General or the County Attorney for an injunction restraining a person from engaging in a violation of board statute or rule. The Executive Director reports that this authority is appropriate although the Board has not sought injunctive relief since she became Executive Director in 1999.

8. The extent to which the Board has addressed deficiencies in its enabling statutes, which prevent it from fulfilling its statutory mandate.

Although the Board has not requested any legislative changes for 2007, it has indicated that some changes are needed to address its legislative mandate. Specifically, the Board would like the following statutory changes:

- Raising the statutory maximum fee cap in A.R.S. §32-2914(A)(1) and (2) for the initial physician application and the issuance of an initial physician license to practice homeopathy.
- Repealing A.R.S. §32-2914(A)(14), which requires a re-registration fee for physicians who supervise medical assistants.
- Aligning the unprofessional conduct description and language in A.R.S. §32-2933 with the AMB and the Osteopathic Board statutes, and including current standards on pain management on Internet prescriptions.

- Changing the renewal time frame in A.R.S. §32-2915(D) to an annual renewal consistent with initial date of licensure rather than renewing all licensees at the end of each year.
 - Establishing standards and a licensing process for mid-level homeopathic practitioners.
 - Changing the residency requirement for board members in A.R.S. §32-2902(C) from 3 to 2 consecutive years.
 - Establishing continuing education standards for physicians and medical assistants.
 - Requiring all applicants convicted of one or more felonies to have received an absolute discharge from the sentences for all felony convictions two or more years before the date of filing an application.
9. **The extent to which changes are necessary in the laws of the Board to adequately comply with the factors in the sunset law.**

Based on audit work, the Board should pursue the following statutory changes:

- To more accurately reflect the therapies its statutes authorize, the Board should identify a more appropriate name to describe its scope of practice and request that the Legislature change the Board's name in A.R.S. §32-2901 (see Finding 1, pages 13 through 25).
- To preserve the integrity of the oral exam, the Board should seek a statutory change to classify the oral exam as a confidential record so it can be conducted in executive session (see Finding 3, pages 35 through 39).
- To ensure that the public is adequately informed of nontraditional medical procedures, the Board should determine what information should be included in a written, informed consent and request that the Legislature amend its statutes in this area (see Finding 2, pages 27 through 33).

In addition, the Legislature should consider the following statutory changes:

- To ensure homeopathic licensees are educated in their field's most recent developments, the Legislature should consider amending the Board's statutes to require continuing education for homeopathic licensees based on the homeopathic board subcommittee's research results.

- To ensure that homeopathic physicians are sufficiently trained in the therapies they are licensed to practice, the Legislature should consider amending A.R.S. §32-2912 to permit the Board to limit a practice to the therapies a licensee is educated in.
- To ensure that the public is adequately informed of nontraditional medical procedures, the Legislature should consider amending the Board's statutes to require physicians to obtain written informed consent from patients.

10. The extent to which the termination of the Board would significantly harm the public health, safety, or welfare.

The audit found that terminating the Board would not significantly harm the public health, safety, or welfare. Nontraditional medicine is more accepted than it was when the Board was established, and the public can access most of the therapies from other sources, such as physicians or other practitioners licensed by the Naturopathic Physician's Board of Medical Examiners, the Acupuncture Board of Examiners, or the Board of Chiropractic Examiners. In addition, the current method of regulation by more than one board may result in weakened regulatory authority overall and inconsistencies in the regulatory actions imposed on the violators (see Finding 1, pages 13 through 25). However, if the Board were terminated, some homeopathic physicians who no longer have an active Arizona allopathic or osteopathic license would be left without a license to practice. The Legislature would need to decide how to address this issue. For example, the Legislature could require them to complete the process for obtaining either an allopathic or osteopathic license to continue to practice, allow them to be grandfathered in to the respective board that previously licensed them if their licenses are or were in good standing, or consider other options. In addition, if the Board were terminated, the Legislature would need to determine how to address the issue of registering homeopathic medical assistants. Options include permitting homeopathic medical assistants to continue as such without requiring the training prescribed by rule for allopathic and osteopathic medical assistants, authorizing the AMB or Osteopathic Board to set up a registration system for such assistants as currently exists for the Homeopathic Board, or taking no action, which would require homeopathic medical assistants to qualify under the existing AMB or Osteopathic Board rules.

The Homeopathic Board and its licensees assert that eliminating the Board would have a negative impact on nontraditional medicine in Arizona. Some board members believe that the Board's existence promotes access to medical care and a greater continuity of care as it allows patients to see one physician for all of their medical care. In addition, although the treatments are available from practitioners other than physicians, some board members argue that homeopathic physicians have a greater depth of medical knowledge and

therefore a better understanding of the best way to treat disease or dysfunction. The Arizona Homeopathic and Integrative Medical Association (AHIMA) and the Board state that the AMB and the Osteopathic Board are still intolerant of homeopathic physicians. As a result, according to the Board's Executive Director, physicians would not practice nontraditional medicine because they would fear being disciplined. Therefore, Board supporters maintain that eliminating the Board would eliminate patients' access to nontraditional care (see Finding 1, pages 13 through 25).

Public attendees of board meetings and other concerned citizens have expressed support for both the Board's continuation and for its possible dissolution. Supporters believe that the Board is critical to ensuring that they can continue to obtain their healthcare of choice and that eliminating the Board would reduce the patient's access to nontraditional care. Some of those who suggested discontinuing the Board or who are concerned about the appropriateness of its current practices asserted that the scope of practice is too broad under this license and the Board may be inappropriately allowing physicians to practice under a homeopathic license when they cannot practice under an allopathic or osteopathic license. In addition, some people assert homeopathy is spiritual and should not be regulated.

11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.

As discussed in Finding 1 (see pages 13 through 25), the Legislature should determine the best regulation method. Arizona established the Board to help ensure that the public had access to licensed and regulated nontraditional medicine. This purpose may not be applicable anymore as nontraditional medicine is more accepted than it was in the 1980s, and the public has access to most of the therapies from other sources. In addition, a separate board to regulate homeopathic physicians is uncommon, and many states have statutes for medical boards to address allopathic and osteopathic physicians' practice of nontraditional medicine rather than creating a separate board. Finally, dual licensure with the Board and the AMB or Osteopathic Board may lead to actions from one board that are negated or lessened by the other board (see Finding 1, pages 13 through 25).

12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

The Board used a private contractor to revise a Web site and develop a database; however, because of a lack of resources, the contractor was not hired for a sufficient amount of time to complete the database.

According to A.R.S. §32-2904(B)(6), the Board can contract for the services of outside consultants to perform any duties that the Board deems necessary to accomplish its mission. Additionally, A.R.S. §32-2904(B)(4) allows the Board to hire or contract with investigators to assist with investigations of violations. Although the Board has statutory authority to contract for additional services beyond its staff abilities and to meet its needs, it has not done so because it does not have sufficient monies. According to the Board, some specific services that the Board could use private contractors for, if monies were available, are rule-writing, court reporters, and investigations, and contracting with the OAH to conduct hearings. In addition, it could use a private contractor to validate its written exams.

AGENCY RESPONSE



ARIZONA STATE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

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August 15th, 2007

Ms. Debbie Davenport, CPA
Auditor General
2910 N. 44th Street, Suite 410
Phoenix AZ 85018

RE: Performance Audit Report and Sunset Review Findings

Dear Ms. Davenport:

Enclosed please find the Arizona Board of Homeopathic Medical Examiners response to the Performance Audit recently conducted by your Staff. We appreciate the opportunity to respond to the Audit Report and Sunset Findings. We also recognize the diligent effort put forth by your staff in their efforts to understand the Homeopathic medical profession and the Board's regulation of the profession. The Board is grateful for your work. The Board has addressed the findings as required by law.

Even though the report is lengthy, it indicates only four findings, which state the following:

- 1) The legislature should consider the best method of regulation of Homeopathic Medicine in the State of Arizona.
- 2) The Board can improve its regulation process.
- 3) The Board can improve its complaint processing.
- 4) The Board can improve its licensing process.

The Board agrees with the findings #2-4 and has already instituted numerous steps to implement the recommendations. The Board feels that the Legislature should consider the best method of regulation of Homeopathic Medicine in the State of Arizona, and make a truly informed choice. We believe that a separate Board of Homeopathic Medical Examiners is essential both to protect the public AND to provide continued availability of these forms of treatment for the public.

Board members do not agree with all of the remarks stated in the Report and recognize that perceptions regarding the regulated profession are oftentimes misleading. Hopefully, our Agency Response will allow persons reading the Report an opportunity to come to a reasonable conclusion regarding the Board and the difficulties faced by the agency and its staff.

Thank you again for the efforts of your staff to improve the performance of the Board.

Sincerely,

Arizona Board of Homeopathic Medical Examiners

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President

Todd Rowe, MD, MD(H). CCH, DHt
Vice-President

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Secretary and Treasurer

Garry Gordon, MD, DO, MD(H)
Board Member

Martha M Grout, MD, MD(H)
Board Member

Marie Stika
Board Member

Enclosure: Agency Response to Performance Audit Report and Sunset Review Findings

ARIZONA BOARD OF HOMEOPATHIC MEDICAL EXAMINERS RESPONSE TO AUDITOR GENERAL'S PERFORMANCE AUDIT

Overview

The Arizona Board of Homeopathic Medical Examiners (hereinafter "Board") has issued the following response to the recent Performance Audit conducted by the Auditor General's Office as part of the Sunset Review set forth in A.R.S. § 41-2951 et seq. The Board has attached as part of its response an action plan to implement recommendations of the Auditor General's office as well as to enhance the management and investigative processes of the Board.

The Board has welcomed this performance audit and has seen it as an opportunity to improve Board policies and procedures and to perform some self-reflection on how we conduct our work. We have found the process to be helpful and are looking forward to implementing the recommendations. We feel that we do a good job in our work in fulfilling our legislative mandate to protect the public from unqualified and unfit Homeopathic practitioners, but feel that there is always room for improving the quality of what we do.

The Board agrees with nearly all of the recommendations of the Performance Audit and has moved to implement them, although some of these require statutory changes and implementation must wait until these statutory changes occur. In addition, the Board has created several recommendations of its own that require a statutory change (see #13 and #16-21 below).

The Performance Audit was requested by the Arizona State Legislature following concerns expressed by a small group of Arizona Homeopathic practitioners that the Board was acting unethically, immorally and with significant conflicts of interest. None of these issues was a finding of the Performance Audit. Our Board works hard to conduct its business ethically and within the legal parameters set forth by the State of Arizona.

Concerns were also expressed at the last hearing that the practice of Homeopathic Medicine is a spiritual practice and therefore exempt from regulation. Nowhere in the world is the practice of Homeopathic Medicine defined in this way. The practice of Homeopathic Medicine is the practice of Medicine. Homeopathic Medicine is a system of Medicine, just as Conventional Medicine and Traditional Chinese Medicine are systems of medicine.

We do find that the Performance Audit presents an inaccurate picture of the importance of the Arizona Board of Homeopathic Medical Examiners and the ongoing need for regulation of Homeopathic Medicine here in Arizona (see below). This section of the report contains inaccuracies and misperceptions about the Homeopathic community. The continuance of the Arizona Board of Homeopathic Medical Examiners is critical to providing public safety. The following are key reasons for the continuance of the Board:

- There is a very strong public demand for Homeopathic Medicine and a public perception of need for the Homeopathic licensing board.
- Unregulated Homeopathic practice represents a clear danger to the public.
- The allopathic (Conventional Medicine) community lacks sufficient knowledge of Homeopathic Medicine to adequately and safely regulate Homeopathic physicians.
- The allopathic community (conventional Medicine) has a strong bias against Homeopathic Medicine which would prevent them from fairly regulating the practice of Homeopathic Medicine.

- With the large projected growth in the Homeopathic community (establishment of a Homeopathic medical school here in Phoenix in 2009) there is a growing need for regulation to promote public safety.
- Homeopathic Medicine is not a specialty of conventional medicine.
- There are modalities of Homeopathic Medicine not practiced by any other medical licensing board.
- Many of the Homeopathic physicians licensed by this Board hold a single licensure.
- The Board promotes public access to non-traditional therapies by physicians.
- Homeopathic Medical Assistants will not be able to safely and legally practice without the Board.

Consumers have increasingly shown that they want freedom of choice, including access to Homeopathic Medicine. Homeopathic Medicine is the second most common form of alternative medicine (CAM) in North and South America and Europe³⁰. It is also the second most common form of alternative medicine in the world today and the most common form of alternative medicine in industrialized countries³⁰.

A 2005 World Health Organization (W.H.O.) Report found that the use of herbal, complementary and alternative medicine is increasing in industrialized countries. The W.H.O.'s definition of health promotes an emphasis on self-empowerment along with a holistic approach to life uniting the body, mind, soul and health in connection with disease prevention. The practices inherent in traditional, complementary and alternative medicine promote a more holistic approach. The WHO report went on to say that the relatively low cost of Homeopathic medicines as well as their accessibility contrasts with the ever rising cost and limited availability (in remote areas) of even the most essential modern medicines.³⁰

***FINDING I: LEGISLATURE SHOULD CONSIDER BEST
REGULATION METHOD OF HOMEOPATHIC MEDICINE***

Recommendation 1: *The Legislature should consider the continued need for a separate Homeopathic licensing board.*

Response: The Board feels strongly that the best method of regulation is the continuation of the Arizona Board of Homeopathic Medical Examiners. The following sections express the key rationale which underlies the importance of the Board in fulfilling its mission of “protecting the health, safety and welfare of Arizona citizens by examining, licensing and regulating Homeopathic physicians”. Homeopathic Medicine is a unique, specialized and holistic approach to health and preventive health care and this should be recognized.

A. There is A Strong Public Demand for Homeopathic Medicine and a Public Perception of Need For the Homeopathic Licensing Board

There is a strong public demand for Homeopathic Medicine. Homeopathic Medicine is the second most common form of medicine in the world today.³⁰ It is also the fastest growing form of alternative medicine.³⁰ Alternative medicine has shown a steady growth in usage in recent years by the public. Recent studies have shown that over 67% of the American public now use alternative medicine.^{25, 26, 28}

It is critical for Arizona citizens to have the freedom to choose their method of healthcare. Homeopathic Medicine provides an important alternative for those individuals who do not have success with allopathic medicine or who choose to seek alternative methods of care as their

primary system of healthcare. Therefore it is critical that these practitioners be regulated to ensure public safety.

Approximately 24 countries have laws which sanction Homeopathic practice by medical doctors, with specialty training and education established. Many countries are moving towards increased regulation of Homeopathic Medicine and practice.³ A related issue concerns the credentials of the training bodies accrediting Homeopaths. Writers commenting on experience in the United States drew attention to the presence of “diploma peddlers” and “diploma mills”.²⁰ These so-called graduates represent a threat to public safety and undermine the credibility of legitimate practitioners. Legislators are responding by examining state regulation³. Currently approximately 81 countries demonstrate some degree of regulatory involvement in Homeopathic practice with a wide range of education and training, statutory regulation and voluntary self-regulation evident³. 48 countries belong to an international society known as LMHI(Liga Medicorum Homeopathica Internationalis) that seeks consistency in Homeopathic regulation³.

The Arizona Homeopathic and Integrative Medical Association is strongly supportive of the Board. In addition, the national Homeopathic community is strongly in support of the continuance and need for the Homeopathic licensing board.

B. Unregulated Homeopathic Practice Represents a Clear Danger to the Public. Protection of the Public Calls for Continued Regulation of Homeopathic Practice.

Homeopathy is a system of medicine. As with any medical system, it has the potential to cause harm.³ Many people use complementary and alternative medicines because they believe that treatments are natural and without side-effects. A literature review indicates that this is not always the case, particularly in the field of Homeopathic Medicine.³ There is a serious, albeit indirect risk of harm, presented to the public by the practice of Homeopathic Medicine, especially by those who are not adequately or appropriately trained to act as Homeopaths. Like any other medical system, the likeliest cause of harm is indirect. Indirect harm such as misapplying Homeopathic principles due to lack of training, misdiagnosis or fraud, presents serious risk to the public.

Homeopathic treatment can specifically cause delay in delivery of other effective medical interventions.^{7,8} Practitioners can misapply treatments, improperly compounding Homeopathic medicines or overstepping their qualifications⁹ or failing to refer to conventional care while waiting for results from Homeopathy.¹⁰ Adverse reactions can occur including allergic reactions to low potency Homeopathic preparations and misapplication of Homeopathic medicines. Direct harm can also result from compounding where treatments with potentially toxic concentrations of arsenic and cadmium are dispensed.¹² Examples cited in the literature include the Homeopathic medicines *Arnica montana* causing fatal hemorrhaging in individuals taking blood thinning agents, caulophyllum producing abortion⁷, Homeopathic medicines causing mercury poisoning¹³ and arsenic toxicity.¹⁴ A German pharmacologist writing about the attractions and dangers of Homeopathic Medicine observes that, in the case of toxic compounds, especially those with carcinogenic or allergic potentiation, Homeopathy bears significant risk for humans.¹⁵

Indirect risks include misdiagnosis, missed diagnoses, disregarding contraindications, discontinuation, prevention or delay of effective conventional therapy, potentially hazardous

diagnostic procedures¹⁶ and interference of Homeopathic medicines with conventional treatments.¹⁷ Harm in the form of prolonged suffering may result from Homeopathic “aggravations” or “healing crises” where symptoms become worse before improving.¹⁸ An audit carried out in the Bristol Homeopathic Hospital Outpatient Department over a two month period in 2005 found that reactions were frequent. Twenty-four percent of patients experienced an aggravation. Eleven per cent reported an adverse event. Twenty-seven per cent of patients described new symptoms while 18 per cent reported a return of old symptoms.¹⁹ Auditors concluded that remedy reactions are common in clinical practice and that recording side effects would facilitate broader understanding and enable standards to be set for information audits and patient care. Other studies of adverse side effects from Homeopathic medicines place the incidence rate between five per cent and 40 per cent.¹⁹ Most Homeopaths feel that the risk of indirect harm from misdiagnosis, failure to refer and fraud are the greatest risk to consumers.

Improper dilutions of “mother tinctures” of Homeopathic medicines by unqualified practitioners also have the potential for serious harm. Administering Homeopathic medicines by injection or intravenous administration can also be quite dangerous in the hands of unlicensed practitioners. Homeopathic medicines that are more potent are traditionally subject to restricted access and are provided only after consultation with a Homeopathic practitioner. Retailers generally favor some form of regulation for Homeopathy, especially to control those who inappropriately represent themselves as Homeopaths, whether or not they have training in the field. To this end, regulation of the practice of Homeopathy is seen as desirable.³ Homeopathic medicines are controlled by the United States Federal Drug Administration, which implies that supervision of a trained professional is needed for safe administration of Homeopathic treatments and that the prescription of Homeopathic medicines of a 200C potency and up (and its equivalent in other scales) and certain low dilutions as stated in the Homeopathic Pharmacopeia of the United States (HPUS) be the exclusive jurisdiction of Homeopathic Physicians and other health care professionals properly trained in Homeopathic Medicine.³

The consensus of the Homeopathic community is to see the education and training qualification for Homeopaths raised. There is general consensus in the Homeopathic profession towards codified entry to practice requirements, common practice standards and codes of conduct.³ There is also a significant recognition of the need for accountability and transparency, and that the public interest needs to be served. The board is concerned that without regulation, anyone can represent themselves as a Homeopathic Physician and that this represents a risk to consumers, who may believe that the person providing Homeopathic care is trained and qualified to do so.

Some Homeopathic practitioners perform or communicate a diagnosis. Unlicensed practitioners do not. It is likely that the consumer is unaware of this distinction, even after having participated in an extensive interview and examination. Consumers may take false comfort in the apparent scientific basis of this lengthy interview. It could leave them vulnerable to mishaps from the Homeopath’s inability, due to lack of training, for example, to distinguish where Homeopathic medicines are appropriate, and where conventional medication and/or surgical treatment would be more appropriate (e.g. in diabetes with potential for development of keto-acidosis, or diabetic coma). Diagnosing is generally considered a controlled act in the United States.³

The suggestion has been made to make a two-tier system of practice where classical

Homeopaths would be unregulated while Homeopathic physicians would be regulated. The Board is open to this idea but feels strongly that Homeopathic physicians who have the capacity to diagnose should, by the same token, be subject to ongoing regulation. In June of 2007, Ontario, Canada created just such a two tiered system.

Clients often turn to Homeopaths after becoming disillusioned with conventional health care providers and treatments. Some states have chosen to have restrictions on non-conventional or complementary and alternative (CAM) therapies. Restrictive states include Georgia, New York and North Carolina. These states impose legal sanctions on Homeopathic diagnosis and treatment, and restrict scopes of practice. Where permitted, the use of CAM is frequently restricted to physicians.³

Public Safety in Arizona

There have been two recent cases in Arizona which illustrated this public safety issue. Although these cases did not fall under the Board's jurisdiction, they clearly indicate a danger to public safety. The first involved an unlicensed Homeopathic practitioner who was treating a diabetic patient, and took the patient off of their insulin and treated the patient with Homeopathic Medicines and acupuncture. The patient went into diabetic coma and died within two days. In 2001, the unlicensed practitioner was found guilty of a class 5 felony for practicing medicine as a homeopathic physician without a license and a class 6 felony for endangerment.

The second case involved an unlicensed Homeopathic practitioner who discouraged her clients from seeing conventional practitioners while in treatment. These patients had serious diseases and the results of this action left them seriously ill.

Had these practitioners been practicing legally under the Board's jurisdiction, under supervision by a licensed homeopathic physician, these results could have been prevented.

There have been numerous recent cases around the nation that have involved Homeopathic practitioners who have been indicted for practicing medicine without a license. In addition, the intense nature of the relationship between the patient and the Homeopath can introduce the risk of sexual abuse.³ Without enforceable practice standards and accountability mechanisms, clients are without recourse except through pursuing civil or criminal action before the courts at great personal cost.

C. The Allopathic (Conventional Medicine) Community Lacks Sufficient Knowledge of Homeopathic Medicine to Adequately and Safely Regulate Homeopathic Physicians

Homeopathic training is not a required part of medical or osteopathic training at any of the medical schools in the United States. Many medical schools offer electives in alternative medicine but only 10% of these offer education in Homeopathic Medicine.²¹ In addition, most CAM training for conventional doctors is survey based (designed to advise patients about use) and not designed towards practice.²¹ The content and focus is when to refer a client for treatment and not how to engage in the treatment itself.

The Board believes that neither the Board of Medical Examiners nor the Board of Osteopathic Examiners is competent to sit in judgment on Homeopathic cases due to their lack of knowledge. According to a 2006 nationwide survey in which 1200 participants responded,

Homeopathic Physicians undertake extensive education and training regarding the nature and usage of the thousands of Homeopathic substances²⁹. They have extensive comprehensive in-depth university level training and knowledge of anatomy, physiology, pathology, biochemistry, physical examination, differential diagnosis and related medical courses as well as over 400 hours of Homeopathic clinical internship.²⁹ In addition, we believe that Homeopathic Medicine involves radically different principles, philosophy, case taking and case analysis methodologies that would preclude any conventional medicine physicians from being able to competently judge cases pertaining to the practice of Homeopathic Medicine (see F below). In short, it is a question of apples and oranges.

The argument that auditors make that Homeopathic Medicine is regulated by other Arizona State Boards, begs the question. Although Homeopathic Medicine is included by other Boards in their scope of practice, none requires the extent of knowledge or training mandated by this Board (see also F below).

D. The Allopathic Community (Conventional Medicine) Has a Strong Bias Against Homeopathic Medicine Which Would Prevent Them From Fairly Regulating the Practice of Homeopathic Medicine

Although alternative medicine has grown tremendously in recent years, conventional medicine's acceptance and tolerance of it has not.³¹ Homeopathic Medicine has a long history of antagonism and fighting with the allopathic (conventional medicine) community. The Board believes that both the Board of Medical Examiners and the Board of Osteopathic Medical Examiners have strong prejudices against Homeopathic Medicine which would preclude them from being able to competently and fairly judge cases pertaining to the practice of Homeopathic Medicine.

Some of the complaints filed against Homeopathic licensees in Arizona in the last several years have involved allegations expressed by conventional doctors that a Homeopathic physician was not practicing competently. By way of illustration, complaints ranged from concerns over the inappropriate use of a professional educational designation to complaints made by Allopathic consultants representing insurance companies that were not knowledgeable in assessing claims for alternative procedures or lab tests. When these cases were reviewed it was found that the Homeopathic Physician was indeed practicing according to the standards of Homeopathic practice but that the conventional physician may have had an apparent bias against Homeopathic Medicine and lacked the knowledge necessary to judge the adequacy of the Homeopathic treatment.

The following narrates some of this history:

- Homeopathic Medicine has been in opposition to Allopathic Medicine since its conception.²²
- The American Medical Association was formed in 1847 partially in opposition to the American Institute of Homeopathy which was formed a few years earlier. Their charter contained a clause preventing any member from consulting with any practitioner "whose practice is based on an exclusive dogma [referring to Homeopathy] to the rejection of the accumulated experience of the profession." This clause prevented allopathic doctors at the risk of expulsion from the society, from talking to Homeopathic physicians.²⁰
- The Flexner Report was written with the direct support of the AMA in 1910, in an effort partly to close down Homeopathic medical schools.^{20, 23, 28} By 1900 there were 22 Homeopathic medical schools, at least 100 Homeopathic hospitals, and over 1000

Homeopathic pharmacies in the United States. In 1910 the Carnegie Foundation released the Flexner report, on the state of medical schools and medical education in the United States. This report is credited with the demise of all forms of medical education beyond the allopathic "scientific" model embraced by the Johns Hopkins medical school. Flexner's findings, not surprisingly, heavily favored the allopathic medical schools, and decried preceptorships and all other forms of medical education. Despite the clear bias against all forms of medical treatment other than allopathic, and despite Flexner's lack of knowledge concerning the field of medicine as a whole, and more specifically concerning the various modalities about which he pronounced judgment, his report, when published, was widely acclaimed by the allopathic medical community. In fact, it sent shock waves through the medical schools of the United States. Within several years, all twenty-five of the then active Homeopathic medical schools began to close. We believe that the country has still not recovered from the effects of this report. The medical community is still heavily influenced by the pharmaceutical industry.^{1,34-37} There still are no Homeopathic medical schools, although one will be opening in Phoenix, Arizona in early 2009.

- The Arizona Board of Homeopathic Medical Examiners was formed in 1982, after much persecution and attacks on Homeopathic practitioners by the allopathic community.

This state of affairs has not changed in recent years and if anything, the situation has worsened. As Homeopathic Medicine has continued to rapidly grow around the world, it has been subject to increasing attacks from the allopathic community.^{1,2,28} Dr. Benjamin Rush, a signer of the Declaration of Independence said:

Unless we put medical freedom into the Constitution, the time will come when medicine will organize into an undercover dictatorship to restrict the art of healing to one class of men and deny equal privileges to others: The Constitution of this Republic should make a special privilege for medical freedom as well as religious freedom.

E. With the Large Projected Growth in the Homeopathic Community in the Next Several Years There is a Growing Need for Regulation to Promote Public Safety

Homeopathic Medicine was extensively regulated in the United States around the turn of the twentieth century. There were 25 Homeopathic medical schools and one in five of the physicians in the United States were Homeopathic. With the advent of the new Homeopathic medical school in Phoenix in February 2009, the Homeopathic community is anticipating a rapid growth of Homeopathic physicians to the State of Arizona. The Board is anticipating an influx of 50 doctoral level Homeopathic practitioners from this school per year. These individuals will be diagnosing patients and treating serious diseases such as cancer, heart disease, diabetes and other life threatening conditions. It is critical that these individuals be licensed and regulated to protect the public.

In addition, there is a growing trend towards regulation and licensure within the Homeopathic community. In June of 2007, Ontario Canada determined that the needs for public safety would best be served by the creation of Homeopathic regulation and licensure and created a licensing board of oversight.

F. Homeopathic Medicine is Not a Specialty of Conventional Medicine

Homeopathic Medicine is not a specialty or subspecialty of conventional or allopathic medicine. Nowhere in the United States or the world today is it described in this way. Homeopathic Medicine has always been considered a distinct and separate branch of medicine.

Homeopathic Medicine is a radically different system of healing than conventional medicine. The following describe some of the essential differences:

- Homeopathic Medicine uses a **completely different set of principles and philosophy** than conventional medicine. Without grounding and training in this philosophy and principles it would be impossible for another physician to practice Homeopathic Medicine or stand in judgment of a Homeopathic physician. Homeopathic Medicine was founded in the late 1700's, by Dr. Samuel Hahnemann in direct opposition to conventional medicine of his day. That situation has not changed much since Dr. Hahnemann's time.
- Homeopathic Medicine uses **completely different methods of practice** than conventional medicine. Homeopathic Medicine uses empirical methods as opposed to the rationalistic methods on which conventional medicine is based. In practice, this means completely different methods of case taking, case analysis, case management, practice management, fee structures and ethics.
- Homeopathic Medicine uses a completely different formulary than conventional medicine. The usage of these Homeopathic medications is based on different principles than allopathic medicine. **The Homeopathic Pharmacopoeia of the United States regulates Homeopathic Medicines. This is a distinct and separate branch of the FDA.** Homeopathic Medicines are prepared in a radically different manner than conventional prescription medicines.

G. Aspects of Homeopathic Medicine Are Not Practiced By Any Other Medical Specialty With the Same Degree of Training and Knowledge

Homeopathic Medicine in the State of Arizona includes two modalities which are not readily available to patients through conventional medicine. The Homeopathic Board provides the best means for the public to access this kind of quality care. Neither of these modalities is taught in either conventional or osteopathic medical schools.

Chelation therapy for elevated body burden of heavy metals, a newly recognized world-wide phenomenon, is being completely ignored by allopathic medicine.³² Homeopathic Medicine recognizes that chronic low level toxicity is a significant factor in the development of chronic "unexplained" illness and provides effective and safe treatment for such "unexplained" illnesses. Conventional medicine denies that this issue even exists.

Orthomolecular medicine involves the use of substances which are normally present in the body (vitamins, minerals, etc) at pharmacologic doses, to replace depleted body stores, and to overcome genetic deficiencies. Conventional medicine tends to be virulent in its rejection of the validity of this form of therapy (for example, high dose Vitamin C given intravenously for treatment of chronic viral illness).

H. Many of the Homeopathic Physicians Licensed by the Board of Homeopathic Medical Examiners Hold Single Licensure.

Nearly half of the licensees would not be able to practice if the Board were eliminated. It is likely that many of these physicians would be barred from practice by the Osteopathic Board and Board of Medical Examiners and would also not be grandfathered into those Boards. In a time of approaching physician shortage³³, this would be most unfortunate.³³

I. The Board Promotes Access to Non-Traditional Therapies by Physicians.

The Board of Homeopathic Medical Examiners increases access to medical care by allowing patients to see one physician for their care rather than seeing several different practitioners. The board also promotes continuity of care because one physician is familiar with all aspects of the patient's treatments. Because of a greater depth of knowledge, Homeopathic physicians often have a better understanding of the best way to treat disease or dysfunction. Eliminating the Board would significantly restrict the public's access to nontraditional care by physicians.

J. Homeopathic Medical Assistants Registered by Board

Homeopathic Medical Assistants invest significant time to obtain adequate training and in some cases expend significant financial resources in pursuit of their Homeopathic education. The report suggests three methods the Legislature may consider in lieu of the current method of registration should the Board not be continued. The *current system* promotes safety for our citizens by requiring *supervision* of the Homeopathic Medical Assistant. In addition the Board and all health care providers recognize the continuing need to develop affordable methods of health care delivery. Homeopathic Medical Assistants provide a vehicle by which to promote access to an affordable alternative in health care.

Recommendation 2: *If the Board is not continued, the Legislature would need to determine how to address the issue of registering homeopathic medical assistants.*

Response: The Board does not support this recommendation. If the Board were discontinued the Board recognizes that the legislature would determine the best method of implementation. However, we believe the Arizona Medical Board and the Arizona Osteopathic Board are unequipped to effectively assess the training and education homeopathic medical assistants possess. Since the majority of licensees at both boards have no training in homeopathic medicine they would be unable to safely and effectively supervise a homeopathic medical assistant. In addition, the training for a homeopathic medical assistant is completely different than the training for medical assistants recognized by the Allopathic Medical community and the Osteopathic Medical community.

Recommendation 3a: *The legislature should consider forming a study committee comprising, at a minimum, members of the Board, the AMB and the Osteopathic Board to determine the best way to help ensure that one board's actions do not negate or mitigate another board's actions.*

Response: We generally support this recommendation and plan to implement it in conjunction with the AMB and Osteopathic Board. We disagree however with the auditors' conclusion that the Board's actions have contradicted other Arizona regulatory board's actions. The Board takes this responsibility extremely seriously and works hard to fulfill its duty of protecting the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners of Homeopathic Medicine in the State of Arizona. It is significant that the auditors only found two cases where this was an issue; one involving an osteopathic physician licensed in 1991 and the second based on the board's 2004 licensing of a physician who had disciplinary action taken against his multiple state medical licenses for activities dating back twelve years ago. The

Board weighs the evidence and determines if there are any mitigating factors or circumstances before determining discipline. The Board is in the process of working with other licensing Boards to create mutual policies to work to avoid this for the future.

If another Board wishes to remove a practitioner's license for providing care that is recognized as appropriate by the Homeopathic Board, this would be considered a mitigating circumstance in considering Homeopathic licensure. This was what occurred in the case of the osteopathic physician cited by the auditor's report. In regards to the allopathic physician, his license had been reinstated by the states of Illinois and Pennsylvania by the time that his application was reviewed by the Board. He was judged to be competent to practice Homeopathic Medicine. This was also considered to be a mitigating circumstance in that he expressed no desire to be licensed by the Arizona Medical Board, noting that his full-time residence is in California, he already held allopathic licenses in Illinois and Pennsylvania, and continues to serve in a charitable capacity within the international medical community.

Recommendation 3b: *Amending Board statutes to require Homeopathic physicians to obtain written informed consent from patients when they are providing nontraditional treatments.*

Response: The Board agrees with this recommendation. However, this recommendation requires a statutory change. The Board has prepared language and policies to require informed consent once this statutory change has occurred (see action plan).

Recommendation 4a: *Work with the AMB and the Osteopathic Board to ensure that one board's actions do not negate or mitigate another board's actions.*

Response: The Board agrees with this recommendation and will implement it. See response to 3a.

Recommendation 4b: *Determine what information a written informed patient consent should include and create a policy requiring their licensees to use the informed consent.*

Response: The Board agrees with this recommendation and will implement it. See response to 3b.

Recommendation 4c: *Identify a more appropriate name to describe the scope of practice and request that the Legislature change the Board's name to more accurately reflect the therapies its statutes authorize.*

Response: The Board agrees with this recommendation and recommends changing the name to the **Arizona Board of Homeopathic and Integrated Medical Examiners**. This will require a statutory change by the legislature (see action plan).

FINDING 2: THE BOARD CAN IMPROVE COMPLAINT-HANDLING PROCESSING.

Response: The Board is in agreement with Finding 2. Much of the delay in complaint processing that the Board has faced has related to cases involving dual jurisdiction. The Board had been previously provided legal advice by its Assistant Attorney General that it could not review a complaint until primary jurisdiction had been mutually determined and agreed upon by both licensing boards. The current Assistant Attorney General has determined that this is no longer true. The Board takes this responsibility extremely seriously and fulfills its duty of protecting the public from unlawful, incompetent, unqualified, impaired and unprofessional practitioners of Homeopathic Medicine in the State of Arizona.

The Board, as recognized by the Auditor General, had been experiencing a lack of funds due to a lack of revenue and this had contributed to delays in complaint processing. With the recent fee increase, the Board believes the problem has been remedied and should improve timeliness of complaint processing.

Recommendation 1a: *Immediately begin the complaint investigation upon the Board's decision that it has primary jurisdiction in a complaint.*

Recommendation 1b: *Investigational interviews should not be conducted during the board meeting. Designate one board member to conduct investigative interviews outside of the board meeting.*

Recommendation 1c: *Develop time frames for key steps in the complaint process to help ensure complaints are processed within 180 days.*

Recommendation 1d: *Enhance the complaint-tracking spreadsheet to include key steps in the complaint process and ensure that complaints are processed in 180 days.*

Recommendation 2: *The Board should develop a form it can use to ensure that it addresses and adjudicates every complaint allegation.*

Response to Recommendations 1a through 1d and Recommendation 2

The Board agrees with these recommendations and is implementing them.

FINDING 3: LICENSURE DOES NOT ENSURE COMPETENCY IN AUTHORIZED THERAPIES.

Response: The Board is in agreement with Finding 3 and a different method of dealing with the finding will be implemented to ensure competency.

Recommendation 1: *The Legislature should consider amending A.R.S. 32-2912 to permit the Board to limit a physician's practice to the therapies a licensee is educated in.*

Response: The Board disagrees with this recommendation, but will implement in a different way by promulgating rules changes to provide certification in modalities that a licensee is educated in. The license of allopathic and osteopathic physicians permits physicians to practice all the modalities within their scope of practice. The license of the homeopathic physician is no different, and should be unrestricted, just like the licenses of their allopathic and osteopathic colleagues.

Recommendation 2A: *The Board should take steps to ensure that the written and oral exams are adequate by developing comprehensive written and oral exams that include questions covering all of the therapies authorized by the license.*

Response: The Board agrees with this recommendation and is implementing it (see action plan). The Board has already created the questions covering all the therapies but has not yet implemented them into the exam.

Recommendation 2B: *The Board should take steps to identify resources and ensure that a qualified person or organization evaluates the exams to determine that they sufficiently test an applicant's knowledge of the therapies the license authorizes.*

Response: The Board agrees with this recommendation and will begin to implement this (see action plan). The Board has already created the questions covering all the therapies but has not yet implemented them into the exams.

Recommendation 3: *To preserve the oral exam's integrity, the Board should seek a statutory change to classify the oral exam as a confidential record so it can be conducted in executive session.*

Response: The Board agrees with this recommendation but has an alternative method of implementation. The Board would like to discontinue its oral examination process, and instead require an in-person interview before licensure is granted. This is in keeping with other medical licensing boards which do not require an oral exam. This would require a rules change to Title 4, Chapter 38, Article 1, Section 107.

Recommendation 4: *To ensure its licensees are educated in their field's most recent developments, the Board should continue to develop continuing education requirements for its licensees and provide its recommendations to the Legislature.*

Response; The Board agrees with this recommendation. It has developed a committee to work on this and has developed suitable recommended legislative language. This recommendation will require a statutory change. The Board has already prepared a set of policies to implement this once that statutory change has occurred (see action plan).

Recommendation 5: *Once the Board has finalized its continuing education requirements, the Legislature should consider amending the Board's statutes to require continuing education for its licensees based on the Board's subcommittee's research results.*

Response; The Board agrees with this recommendation and has finalized its continuing education requirements. This recommendation requires a statutory change.

OTHER PERTINENT INFORMATION

Response: Although there were no additional recommendations in this section, the Board would like to respond to the findings and to make its own recommendations. The Arizona Board of Homeopathic Medical Examiners has licensed two physicians in the last three years who have had previous felony convictions. This is in keeping with other medical boards in this state and in accordance with A.R.S. §32-2912(C) which states that:

If the board finds that an applicant has committed an act or engaged in conduct that would constitute grounds for disciplinary action, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, before it issues a license the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

We have worked hard to find a balance between protecting the public and facilitating physician rehabilitation. We believe that we have worked in the best interests of the public and the state in these cases. We also believe that lives and training should not be wasted in blind, retaliatory and punitive action. However, we would like to request the following statutory change, in an effort to better protect the public:

Board Recommendation 1: *The Board should require all applicants previously convicted of a felony, to have received an absolute discharge from the sentences for all felony convictions two or more years before the date of filing an application for licensure through the Arizona Board of Homeopathic Medical Examiners.*

Discussion: The Board is requesting a statutory change to help tighten up restrictions in this area. This change would require that anyone previously convicted of a felony would be required to wait at least a two-year period following completion (*i.e.* absolute discharge) of all sentencing requirements. This will require a statutory change.

SUNSET FACTORS

Factor 3: *The Board should ensure the Web site information is complete and accurate.*

Response: The Board agrees with this recommendation and will implement it. In addition, the Board will ensure that the application forms and disciplinary actions against licensees are available online.

Factor 4: *The Board should establish rules for A.R.S. 32-2912(D)4 which required the Board to approve internships but does not address the standards to be used by the Board in approving internships. In addition, A.R.S. 32-2951(G) required rules regarding the labeling recordkeeping, storage and packaging of drugs while the rules do not specifically address the recordkeeping or storage of drugs.*

Response: The Board agrees with this recommendation and will implement it.

Factor 8: *To better meet its mandates, the Board is requesting the following statutory changes in addition to the ones described above:*

A. *Remove statutory authority from Board responsibilities to accredit educational institutions that offer medical degrees in Homeopathic Medicine.*

Discussion: The Board has statutory authority to “Accredit educational institutions that offer medical degrees in Homeopathic Medicine.” The Board is not well suited to serve as an accrediting board. We have not developed standards for accreditation and do not feel that the Board is well set up for accrediting Homeopathic medical institutions. We recommend that this be removed from the statutes.

B *Raise the statutory maximum fee cap in A.R. S. 32-2914(A)(1) and (2) for the initial physician application and the issuance of an initial physician license to practice Homeopathy.*

C. *Repeal A.R.S. 32-2914(A)(14) which requires a re-registration fee for physicians who supervise medical assistants.*

D. *Align the unprofessional conduct description and language in A.R.S. 32-2933 with the AMB and the Osteopathic Board statutes, and include current standards on pain management and internet prescriptions.*

E. *Change the renewal time frame in A.R.S. 32-1915 (D) to an annual renewal consistent with initial date of licensure rather than renewing all licensees at the end of each year.*

F. *Establish standards and a registration/licensing process for mid-level Homeopathic practitioners.*

G. *Change the residency requirement for board members in A.R.S. 32-2902(C) from 3 to 2 consecutive years.*

ARIZONA BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

ACTION PLAN

Date: August 15, 2007

GOAL: To improve the functions and processes of the Board and ensure the public health, welfare and safety through the licensing and regulation of Homeopathic physicians.

OBJECTIVE: By September 1st, 2008 Board improve all areas as recommended by the Arizona Auditor General in their June, 2007 Performance Audit (many of the statutory changes will not be accomplished until September 2008).

STRATEGY: Implement improvements based on the recommendations of the Auditor General's office in their July 2007 Report.

Action Steps	Persons Responsible	Due Dates	Resources Needed
1. Working with Other Boards	Board Members/Staff /AMB/OB	February 1 st , 2008	Statutes/Rules
2. Requiring Informed Consent	Legislature/Board Members/Staff	***Fall, 2008	Statutory Change
3. Name Change	Legislature/Staff	***Fall, 2008	Statutory Change
4. Immediate Processing of Complaints	Board Members/Staff	May 1 st , 2007	Rules/Policies
5. Investigational Interviews	Board Members/Staff	September 1 st , 2007	Statutes/Rules
6. Monitoring of Complaints	Board Members/Staff	***September 1 st , 2007	Statutes/Rules
7. Adjudicating Complaints	Board Members/Staff	September 1 st , 2007	Statutes/Rules
8. Limiting Licensure to Modalities	Legislature/Board Members/Staff	September 1 st , 2008	Statutory Change/Rules/Fiscal Resources/Appropriation**
9. Change Licensing Exam	Board Members/Staff	September 1 st , 2007	Rules/Policies
10. Validate Exam	Board Members/Staff/Consultant	October, 2008	Rules/Policies/Fiscal Resources/Appropriation**
11. Repeal Oral Exam	Legislature/Board Members/Staff	***Fall, 2008	Rules Change
12. Continuing Medical Education	Legislature/Board Members/Staff	***Fall, 2008	Statutory Change/Rules
13. Felony Restriction	Legislature/Staff	***Fall, 2008	Statutory Change
14. Web Site Enhancement	Staff/Consultant	December, 2009	Fiscal Resources/Appropriation*
15. Amend Rules through GERC	Staff/Board/Consultant	September 1 st , 2008	Rules/ Fiscal Resources/Appropriation*
16. Statutory Maximum Fee Cap	Legislature/Staff	***Fall, 2008	Statutory Change/Rules
17. Re-registration Fees for Physicians	Legislative	***Fall, 2008	Statutory Change (Delete from Statute)
18. Unprofessional Conduct and Pain Mgmt.	Legislative/Staff	***Fall, 2008	Statutory Change
19. Update Renewal Time Frame	Legislative/Staff/Computer Consultant	***Fall, 2008	Statutory Change/Fiscal Resources/Appropriation*
20. Mid Level Homeopathic Practitioners	Legislative/Staff/Board/Consultant	***Fall, 2008/December, 2009	Statutory Change/Rules/Fiscal Resources/Appropriation**
21. Residency Requirements	Legislative/Staff	***Fall, 2008	Statutory Change

***Note that this requires a legislative change and is at the pleasure of the legislature.

*Note: 2008 Budget included \$1700 for programming and web enhancement related to adding capability for medical assistants.

- The Board needs to seek a supplemental appropriation in 2009 FY budget to include costs to the change the rules related to Article 2: Labeling; validation of the written examination, and the cost of initiating the promulgation of rules for Internships.
- In 2010 budget, the Board will have to request funds to complete the internship rules, and include additional costs to implement a change in the renewal cycle (from year end to renewal based on issue date).
- The Board will have to consider the timing related to the implementation of CEU requirements (I suggest a future date certain for implementation of the CEU requirement) . You will also have to adjust the "grace period related to late renewal - ~~(delete the current four-month late renewal grace period and change to 30 or 45 days)~~ and determine how to time the implementation of ceu requirements in the first year of the change. The Board will have to give the licensees time to be aware of the new requirement and preferably a year to implement.

** If a Mid Level Homeopathic Practitioner status is added a rules consultant will need to be hired to develop rules for this class of regulated entity (additional appropriation in 2010)

**Validation of the examination would require a professional entity and monetary resources

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Arizona State Land Department

Commission for Postsecondary Education